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1 {York Stenographic Services, Inc.}

2 RPTS BROWN

3 HIF071.160

4 REAUTHORIZATION OF THE SATELLITE TELEVISION EXTENSION AND

5 LOCALISM ACT

6 WEDNESDAY, MARCH 12, 2014

7 House of Representatives,

8 Subcommittee on Communications and Technology

9 Committee on Energy and Commerce

10 Washington, D.C.

11 The Subcommittee met, pursuant to call, at 10:39 a.m.,
12 in Room 2123 of the Rayburn House Office Building, Hon. Greg
13 Walden [Chairman of the Subcommittee] presiding.

14 Members present: Representatives Walden, Latta, Terry,
15 Blackburn, Scalise, Lance, Guthrie, Gardner, Pompeo,
16 Kinzinger, Long, Ellmers, Barton, Upton (ex officio), Eshoo,

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17 Doyle, Matsui, Braley, Welch, Lujan, Pallone, DeGette,
18 Matheson, Butterfield, and Waxman (ex officio).

19 Staff present: Gary Andres, Staff Director; Ray Baum,
20 Senior Policy Advisor/Director of Coalitions; Matt Bravo,
21 Professional Staff Member; Andy Duberstein, Deputy Press
22 Secretary; Gene Fullano, Detailee, Telecom; Kelsey Guyselman,
23 Counsel, Telecom; Grace Koh, Counsel, Telecom; Alexa Marrero,
24 Deputy Staff Director; David Redl, Chief Counsel, Telecom;
25 Charlotte Savercool, Legislative Coordinator; Tom Wilbur,
26 Digital Media Advisor; Phil Barnett, Staff Director; Shawn
27 Chang, Chief Counsel for Communications and Technology
28 Subcommittee; Margaret McCarthy, Professional Staff Member;
29 Kara van Stralen, Policy Analyst; and Patrick Donovan, FCC
30 Detailee.

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31 Mr. {Walden.} I will call to order the Subcommittee on
32 Communications and Technology, and welcome you all here this
33 morning for our hearing. Today the Subcommittee on
34 Communications and Technology will consider draft legislation
35 to reauthorize the Satellite Television Extension and
36 Localism Act. That is the law that governs the provision of
37 direct broadcast satellite service to millions of Americans.

38 Today's hearing follows several previous hearings on the
39 subject, multiple hearings on the communications marketplace,
40 a bipartisan roundtable debate on the issue of the
41 integration ban, and an incredible number of meetings with
42 stakeholders by members of this committee on both sides of
43 the aisle. It has taken an enormous amount of work, but this
44 draft has earned the support of cable, broadcast, and
45 satellite competitors. I especially want to thank Vice-
46 Chairman Bob Latta, and my Democratic colleague from Texas,
47 Gene Green, on their thoughtful bipartisan work on the
48 integration ban repeal. It is important to note that this
49 provision still requires cable companies to support Cards.
50 It just gets an outdated, expensive, energy consuming

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51 provision of little or no value off the FCC's books. We
52 believe in spurring innovation, not holding it back.

53 The draft legislation responds to the concerns of
54 members of both sides of the aisle regarding the joint
55 service agreements and sweeps week provisions that seem to
56 put a thumb on the scale. I have listened to those concerns,
57 and propose eliminating sweeps week prohibition, which keeps
58 cable operators, and not other pay TV providers, from
59 dropping broadcast signals during sweeps weeks, the weeks
60 when Nielsen runs its rating analyses. Further, the draft
61 contains a provision that would limit joint retransmission
62 consent negotiation by two or more independent broadcasters
63 in a shared service agreement, unless the pay TV provider
64 agrees to negotiate jointly with those broadcasters. I have
65 no complaints with provisions that support fair negotiating
66 tactics for all parties to an agreement.

67 I am, however, very concerned by the FCC's recently
68 announced plans to dump joint sales agreements into their
69 local media ownership calculations, especially without first
70 completing their statutorily required quadrennial review of
71 the marketplace. Up in Fairbanks, Alaska, all four TV

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72 stations are operated from the same group of Quonset huts to
73 share costs, and create efficiencies that allow the stations
74 to provide a variety of news and entertainment to this city
75 of a whopping 32,000 people. Absent a JSA, it is unlikely
76 the community could support four television stations. I
77 would also draw the committee's attention to a recent ``Wall
78 Street Journal'' op-ed that includes the community served by
79 the nation's only African-American owned full power broadcast
80 station, and I will introduce that into the record at the
81 end, and by local broadcasters, like Bob Singer, the general
82 manager of several local television stations in my district.
83 There is a positive role for consumers in joint service
84 agreements.

85 Unfortunately, Chairman Wheeler is putting the JSA cart
86 before the media ownership horse. The Federal Communications
87 Commission is required by statute to review the entire set of
88 media ownership laws every four years. It has consistently
89 failed to follow the law. If a licensee of the FCC failed to
90 follow the law, it would lose its license, or be subject to
91 penalty. Chairman Wheeler is forging ahead to regulate JSAs,
92 while leaving the commission's legal obligations for another

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93 day. This is why we have included in this draft a clear
94 directive from the Congress to the FCC that it should do its
95 job, and finish the quadrennial media ownership review before
96 it tinkers with JSAs. But in the meantime, we bring fairness
97 to the marketplace when it comes to the misuse of JSAs for
98 retransmission consent negotiations. Our draft finds the
99 right balance.

100 Our work here is set against the backdrop of our larger
101 effort to update the Communications Act and bring our
102 communications laws in line with the innovation and dynamism
103 of the communications marketplace. We hope that many
104 government, industry, and consumer stakeholders in this
105 complex discussion will engage in the comprehensive
106 discussion of the Comm Act update. This will be a time
107 consuming process, however, and as my colleague Mr. Shimkus
108 explained to ``Politico'' last week, the Telecomm rewrite is
109 not for sissies.

110 The video marketplace is not a monolithic structure by
111 any stretch of the imagination. Today's witnesses represent
112 diverse parts of that ecosystem. The broadcasting, cable,
113 direct broadcast, satellite, and retail set-top box

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114 industries are all well represented on our panel, as well as
115 public interest community. I thank our witnesses being here
116 today, I appreciate your counsel, and I yield the remaining
117 time to the vice-chair of the committee, Mr. Latta.

118 [The prepared statement of Mr. Walden follows:]

119 ***** COMMITTEE INSERT *****

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120 Mr. {Latta.} Well, I thank the Chairman, and I also
121 appreciate you holding today's hearing, and I also thank our
122 panel of witnesses for testifying. Thank you very much for
123 being here. Today we take another opportunity to examine the
124 video marketplace in the context of the Satellite Television
125 Extension and Localism Act reauthorization. We can all agree
126 that there has been a tremendous amount of innovation and
127 technological advancement in the video marketplace since the
128 Satellite Home Viewer Act, which was enacted in 1988.

129 Since the law was last reauthorized in 2010, we have
130 been witness to an even greater innovation in modern
131 developments. We have seen a proliferation of new entrants
132 into the video market, which has spurred greater investment,
133 job creation, increased competition among video distributors
134 and content providers, and has offered consumers with greater
135 choice and enhanced experiences that are closely aligned with
136 their personal preferences and interests. It is incumbent
137 upon this Congress, and this subcommittee in particular, to
138 create and support policies that allow the video marketplace
139 to continue to flourish and innovate, and empower market

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140 participants to the flexibility, and efficiently meet the
141 ever evolving demands of consumers. To fully realize the
142 promise and potential of this industry, we must be willing to
143 remove outdated government regulations that are no longer
144 justifiable, and will limit and stifle future progress and
145 advancement if left in place.

146 I want to thank Chairman Upton and Walden for
147 acknowledging the work we have done with Congressman Gene
148 Green on H.R. 3196, including the proposal to eliminate the
149 integration ban on set-top boxes as a provision in the first
150 draft of the STELA reauthorization. This represents a
151 positive forward step in updating policies to reflect today's
152 competitive video marketplace, in eliminating a regulatory
153 burden to innovation in consumer choice. I look forward to
154 continuing to work with you, Mr. Chairman, Chairman Upton,
155 Congressman Green, and other members of the subcommittee on
156 moving this draft reauthorization package forward. I look
157 forward to the testimony today, and I yield back.

158 [The prepared statement of Mr. Latta follows:]

159 ***** COMMITTEE INSERT *****

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|

160 Mr. {Walden.} Thank the gentleman. I seek unanimous
161 consent to enter into the record statements from National
162 Association of Broadcasters, the National Cable and
163 Telecommunications Associations, and a joint statement from
164 Dish Network and DirecTV in support of the discussion draft,
165 as well as letters of support for repeal of the cable card
166 integration ban from the National Black Chamber of Commerce,
167 the Latinos in Information, Sciences, and Technology
168 Association, citing the cost of the integration ban to low
169 income families. Without objection, so ordered.

170 [The information follows:]

171 ***** COMMITTEE INSERT *****

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172 Mr. {Walden.} Now recognize my friend and colleague
173 from California, Ms. Eshoo.

174 Ms. {Eshoo.} Thank you, Mr. Chairman, and welcome to
175 all of the witnesses. We are pleased that you are here, and
176 we know that we are going to learn a great deal from you.

177 Over the past year and a half, the message, I think,
178 from industry and consumer advocates to our subcommittee has
179 been pretty clear. Our video laws are outdated, and in some
180 cases, they are even being abused. In 2010 there were just
181 12 broadcast television blackouts nationwide. In 2013, last
182 year, there were 127. Similarly, re-trans fees are expected
183 to more than double from \$3.3 billion to \$7 billion by 2018.
184 I think that it is pretty clear who the losers are in all of
185 this. It is consumers who will continue to see rising cable
186 bills, and in most cases will not be compensated when their
187 programming is blacked out.

188 Some say that this is simply a manufactured crisis, but
189 I would ask that the following questions be considered. Why
190 is a law that was intended to promote localism being used to
191 block national cable programming or content that is available

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192 free on the Internet? Why does the law prohibit cable
193 operators from taking down a broadcast signal during a
194 Nielsen's sweeps week, yet there is no such prohibition for a
195 broadcaster that pulls their signal during a re-trans
196 dispute? And why, when a consumer simply wants HBO, does the
197 law require that they also pay for re-trans stations that are
198 available free over the air?

199 I think that these are some of the critical questions
200 that led me to introduce the Video Choice Act in December,
201 and a chorus of support, I might say strange political
202 bedfellows, came together from constituents, to pay TV
203 providers, to independent programmers, to think tanks, and to
204 consumer groups, to undertake targeted video reforms, and do
205 so as part of the re-authorization of STELA. I think we have
206 to work together in a bipartisan way, just as Representative
207 Scalise and I have done over the past several months.

208 Unfortunately, several of the provisions in the
209 discussion draft do not embody the bipartisan values that
210 have been the cornerstone of previous reauthorizations. We
211 have to be forward-thinking, both in our approach to
212 legislating, and when we are going to dismantle something,

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213 where there is a provision in the draft that does so that has
214 helped to ensure that consumers can buy cable set-top boxes
215 from someone other than their local cable company, we have to
216 have an eye on the future. Before we dismantle, we have to
217 establish a framework for the future. And I think that this
218 is something that we all need to think long and hard about.

219 I am also concerned by a provision that would
220 effectively bar the FCC from modifying its rules to close a
221 loophole that broadcasters have been exploiting to circumvent
222 the FCC's media ownership rules. I find it contradictory
223 that while the draft bill appropriately recognizes the anti-
224 competitive nature of joint retransmission consent
225 negotiations, it also gives tacit approval for other forms of
226 coordination among broadcasters, so long as it is not done at
227 the expense of the cable and satellite operators. I think we
228 can do better than this.

229 In closing, Mr. Chairman, you know that I have said
230 before, and I will continue to say, that we work together,
231 not only with me, but with all of my colleagues on this side
232 of the aisle, to eliminate or re-draft the provisions I have
233 highlighted to support consumers, competition, and innovation

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234 across the video marketplace. And with that, I would like to
235 ask unanimous consent to place into the record two letters,
236 one from CCIA, and the other from Free Press, Consumer
237 Action, Public Knowledge, Writers' Guild of America West,
238 Tech Company Alliance, et cetera. It is a lot of good
239 people. So, with that, I don't think I have any time left--

240 Mr. {Walden.} Yeah, you do.

241 Ms. {Eshoo.} --do I?

242 Mr. {Walden.} Without objection, it will be entered
243 into the record.

244 [The information follows:]

245 ***** COMMITTEE INSERT *****

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246 Ms. {Eshoo.} All right. I do have 35 seconds, if there
247 is anyone that would like to use the remainder of my time.
248 Doris? You want to wait for someone else? Okay. I will
249 yield back, Mr. Chairman.

250 [The prepared statement of Ms. Eshoo follows:]

251 ***** COMMITTEE INSERT *****

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252 Mr. {Walden.} Gentlelady--

253 Ms. {Eshoo.} Thank you.

254 Mr. {Walden.} --yields back the balance of her time. I
255 thank the gentlelady for her comments. Now recognize the
256 Chairman of the full committee, the gentleman from Michigan,
257 Mr. Upton.

258 The {Chairman.} Thank you, Mr. Chairman. I want to
259 thank all of our witnesses for coming today to discuss this
260 draft of this must pass legislation. More than a million and
261 a half satellite TV subscribers rely on the provisions of
262 STELA that expire at the end of the year, and the draft
263 legislation that is subject of our hearing will ensure that
264 these subscribers continue to receive the services that, in
265 fact, they have come to rely on.

266 There has been a healthy debate, yes, there has, over
267 what this reauthorization should and should not do, and we
268 welcome continued input as the process moves forward. And we
269 want to work to reauthorize STELA. It is important to
270 remember that this is not the venue for comprehensive reform.
271 As you know, the committee has embarked on a multi-year

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272 effort to update the Communications Act, and this process
273 will be driven by a thorough and thoughtful review of all
274 aspects of today's communications marketplace, with a goal of
275 updating our laws to better reflect today's realities, while
276 leaving the flexibility necessary to foster continued
277 innovation and growth. And we hope and expect that you all
278 will be very active participants in that process, as I know
279 that you will want to do so. Thanks to the hard work of this
280 subcommittee, and input from the public and industry
281 stakeholders, Chairman Walden issued a discussion draft that
282 offers practical and narrow reforms to the current video
283 market, while properly leaving comprehensive reform to the
284 #CommActUpdate.

285 I strongly support this draft, and encourage others to
286 do so as well. In addition to extending the expiring
287 satellite provisions, today's draft also makes several
288 targeted pro-consumer reforms to video laws and regulations.
289 It repeals costly FCC rules that require a cable card in set-
290 top boxes leased by cable companies. It removes a government
291 guarantee of sweeps week protection in retransmission
292 disputes. And it takes action to ensure that the FCC meets

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293 its statutory obligation to review and deregulate media
294 ownership rules before attempting to take additional
295 regulatory actions against sharing agreements. The draft
296 also helps to keep negotiations fair between broadcasters and
297 pay TV providers for retransmission consent. So these are, I
298 think, well considered deregulatory reforms, the type of
299 intelligent reforms that the committee and this Congress
300 should think about during the #CommActUpdate.

301 I yield the balance of my time, 1 minute each to Mr.
302 Scalise, Barton, and Blackburn.

303 [The prepared statement of Mr. Upton follows:]

304 ***** COMMITTEE INSERT *****

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305 Mr. {Scalise.} Thank you, Mr. Chairman. This very
306 modest STELA draft we are reviewing today begins to address
307 some of the outdated provisions shackling the video
308 marketplace, but I think there is a lot more work to be
309 tackled in this area before we can say that we got the public
310 policy right, and that we leveled the playing field for our
311 consumers back home.

312 I know many in this city, on all sides of these issues,
313 are fearful of what a marketplace based predominantly on
314 copyright law would look like. But as long as we have this
315 government manipulated market, with its compulsory licensing,
316 carriage regulations, and consumer purchase mandates, it is
317 completely reasonable to suggest, as Ranking Member Eshoo
318 would also agree, that these outdated laws be updated over
319 time. This is not a free market at work. It is a government
320 creation. We should never stop championing the belief that
321 consumers will stand to gain the most when we allow our
322 nation's innovators, entrepreneurs, and risk takers to show
323 Washington the way, not the other way around.

324 I look forward to continuing to embrace this unique

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325 opportunity that brings together members from both sides of
326 the aisle, and hopefully both sides of the Capitol, as we
327 collectively work to modernize the decades-old laws and
328 regulations that foreclose on the possibility of freedom for
329 all market participants, and greater consumer choice. I look
330 forward to hearing from our panelists, and I yield back.

331 [The prepared statement of Mr. Scalise follows:]

332 ***** COMMITTEE INSERT *****

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333 Mr. {Barton.} Mr. Chairman, there is nothing like
334 renewing old acquaintances for members of this subcommittee
335 than scheduling a legislative hearing. And as I look out in
336 the audience, I see a number of my old friends who have
337 called me, or made an attempt to touch base, and since you
338 scheduled this hearing, we have got two former Congressmen of
339 the subcommittee, Mr. Bass of New Hampshire and Ms. Myrick of
340 North Carolina. We are glad to see them.

341 I was here, Mr. Chairman, in 1988 when we passed the
342 Satellite Home Viewer Act, and I have been here for all the
343 reauthorizations. I think it is imperative that we
344 reauthorize it again this year, since it expires at the end
345 of December this year. And I think the discussion draft has
346 received a lot of input, excuse me, and I think some of the
347 changes that have resulted from that input are positive, and
348 I look forward to the hearing with that.

349 Mrs. Blackburn is not here, so I will yield back to the
350 Chairman, unless the Chairman wishes to yield to one of the
351 other members.

352 [The prepared statement of Mr. Barton follows:]

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354 Mr. {Walden.} Any other member want to use up the
355 remaining 34 seconds? If not, gentleman yields back the
356 balance of this time. We will now turn to the ranking
357 Democrat on the committee, the gentleman from California, Mr.
358 Waxman, for 5 minutes.

359 Mr. {Waxman.} Thank you very much, Mr. Chairman. We
360 are here today to discuss draft satellite television
361 legislation released by Chairman Walden last week. I am not
362 prepared to support the bill in its current version, but I am
363 prepared to work with Chairman Walden, Chairman Upton,
364 Ranking Member Eshoo to get a bill we could all stand behind.
365 Last night the House unanimously passed the FCC Process
366 Reform Act. It took work to get that bill in a shape that
367 every member of the House could support. But if we were able
368 to bridge differences in the FCC Process bill that were much
369 bigger than we face today, I am hopeful that, with goodwill
370 on both sides, we can reach the same result on this issue.

371 My initial preference was for a clean reauthorization of
372 the expiring provisions of the Satellite Television Extension
373 and Localism Act, or STELA. Previous authorizations may not

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374 have been clean, but the new provisions that had been added
375 were part and parcel of the purpose of the law, giving
376 satellite subscribers access to local and network broadcast
377 programming. Today we are considering a different kind of
378 bill. It would make changes to the way retransmission
379 consent negotiations may occur by altering the bargaining
380 power between programmers and distributors. It would also
381 hamstring the FCC's ability to address broadcaster
382 coordination that could undermine the diversity of voices,
383 and lead to job losses. And we would repeal set-top box
384 regulations that don't even apply to satellite companies.

385 Mr. Chairman, I can understand the draft bill
386 prohibiting broadcasters coordination in retransmission
387 consent with limited exemptions, while condoning similar
388 coordination of broadcasters jointly sell ad time, or
389 otherwise coordinate outside the retransmission consent
390 process. That is what this bill would do, and I find the two
391 approaches difficult to reconcile. I believe much of the
392 bill passes the public interest test, but not every
393 provision.

394 I support FCC's tightening its attribution rules to

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395 address joint sales agreements between television stations.
396 I don't understand why the same standard wouldn't apply that
397 we are applying to anti-competitive behavior among
398 broadcasters that results in consumer harm in retransmission
399 consent negotiations to also apply to joint agreements that
400 have a well-documented history of increasing prices, reducing
401 competition, and otherwise undermining the public interest.

402 The set-top box issue is also one we need to examine
403 closely. Some energy experts believe the cable card
404 requirement is preventing the design of more energy efficient
405 set-top boxes. If that is a real concern, I would like to
406 see it addressed. But at the same time, we need to make sure
407 we are preserving competition and innovation in the market
408 for set-top boxes.

409 I think that the bill has been handled well, it is a
410 bill we could work with, and I am hopeful that we can reach a
411 full agreement on all the provisions. I want to close by
412 thanking Chairman Walden for his efforts, and for this
413 hearing today. I hope we can work together to develop a
414 truly bipartisan Satellite Reauthorization Bill. And I want
415 to yield at this time to my colleague from California, Ms.

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416 Matsui.

417 [The prepared statement of Mr. Waxman follows:]

418 ***** COMMITTEE INSERT *****

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419 Ms. {Matsui.} Thank you very much, Ranking Member
420 Waxman, for yielding me time. Mr. Chairman, thank you for
421 holding today's hearing, and I would like to thank the
422 witnesses for being here today.

423 I am pleased that we are beginning this legislative
424 process to renew satellite television--and license. However,
425 I am surprised that, unlike the past, our legislative
426 starting point is not a bipartisan, narrowly tailored bill.
427 Now that the bill has expanded, I do look forward to hearing
428 more about the merits of the provisions relating to
429 retransmission consent and set-top boxes. We know that
430 technology is disrupting the video marketplace, with new and
431 innovative ways to watch TV and stream movies and videos. As
432 a result, we are seeing new players entering the marketplace,
433 and we are seeing trends toward more consolidation.

434 However, one thing is certain. Americans are tired of
435 being caught in the middle of retransmission disputes. That
436 is why, since the STELA proposal has expanded, I believe we
437 should look at this bill through a filter, and that is, will
438 it put the consumers in a better place? It is my hope that

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439 we can definitively answer that question. Moving forward, it
440 is my hope that this subcommittee can work in a bipartisan
441 manner to improve the bill and produce a bipartisan product.

442 And I yield back the balance of my time.

443 [The prepared statement of Ms. Matsui follows:]

444 ***** COMMITTEE INSERT *****

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445 Mr. {Walden.} Gentlelady yields back the balance of her
446 time. All time how now expired, and we will get on about
447 hearing from our witnesses, and I want to thank them all for
448 being here. And we are going to start with Mr. Mike
449 Palkovic, did I say that right? Palkovic?

450 Mr. {Palkovic.} Yes, you did.

451 Mr. {Walden.} Executive Vice President, Services and
452 Operations of DirecTV. Mr. Palkovic, thank you for being
453 here today. We look forward to your testimony.

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454 ^STATEMENTS OF MIKE PALKOVIC, EXECUTIVE VICE PRESIDENT,
455 SERVICES AND OPERATIONS, DIRECTV; MARCI BURDICK, SENIOR VICE
456 PRESIDENT OF BROADCASTING, SCHURZ COMMUNICATIONS; MICHAEL
457 POWELL, PRESIDENT AND CEO, NATIONAL CABLE AND
458 TELECOMMUNICATIONS ASSOCIATION; MATT ZINN, SENIOR VICE
459 PRESIDENT, GENERAL COUNSEL AND CHIEF PRIVACY OFFICER, TIVO;
460 AND MATT WOOD, POLICY DIRECTOR, FREE PRESS.

|

461 ^STATEMENT OF MIKE PALKOVIC

462 } Mr. {Palkovic.} Thank you. Good morning, Chairman
463 Walden, Ranking Member Eshoo, and members of the
464 subcommittee. My name is Mike Palkovic, and I am the
465 Executive Vice President of Operations at DirecTV. Thank you
466 for inviting me back to testify on STELA reauthorization.
467 STELA reauthorization is critical to millions of your
468 constituents who depend upon DirecTV. Without Congressional
469 action, key provisions expire this December. The committee
470 and its staff have put many hours to produce the first
471 discussion draft of legislation that would reauthorize these

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472 provisions, so my first and most important message is simple,
473 thank you. DirecTV and our subscribers appreciate your hard
474 work, and your willingness to address STELA reauthorization.
475 You may have heard from some companies telling you what you
476 should or should not have done with the discussion draft.
477 Some may even be telling you to do nothing, or to simply
478 change the expiration date in a ``clean'' reauthorization,
479 something Congress has never done before. This, however, is
480 the Satellite Home Viewer Act. I am here on behalf of the
481 nation's leading satellite provider to say that we agree with
482 the committee's approach.

483 Does this discussion draft contain everything DirecTV
484 thinks it should? Of course not, but it does two critically
485 important things. First, it preserves service for millions
486 of distant signal subscribers. With all of the other issues
487 before this committee, it is sometimes easy to forget the key
488 distant signal provisions are due to expire this December.
489 Your constituents, however, have not forgotten about these
490 provisions. More than a million and a half subscribers, many
491 in the most rural areas of the country, receive at least one
492 distant network signal from DirecTV or Dish. Were Congress

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493 to fail to reauthorize STELA, these subscribers would lose
494 service that most Americans take for granted.

495 Second, the draft bill addresses one particularly
496 egregious abuse of the FCC's rules that is raising prices for
497 consumers. Reasonable people can differ on the broader
498 policy questions that divide broadcasters and pay TV
499 providers. For example, broadcasters think our subscribers
500 don't pay them enough for their programming, and we wish
501 broadcasters would pay us for delivering their signals to
502 millions of our subscribers who would never be able to get
503 them over the air. Whatever one's views, however, most
504 people agree that you shouldn't be able to evade FCC rules.
505 Yet this is exactly what broadcasters are doing today, and
506 this is exactly what the discussion draft would stop.

507 Broadcasters increasingly negotiation retransmission
508 consent jointly on behalf of two, three, or even four network
509 affiliates in the same market. This leads to higher prices,
510 as much as 161 percent higher, according to one estimate, and
511 it leads to greater harm when blackouts occur. This is why
512 the FCC appears poised to follow the advice of the Department
513 of Justice, by restricting joint retransmission consent

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514 negotiations for non-commonly owned stations in the same
515 market. The committee's discussion draft takes the same
516 approach. We think is sensible and long overdue reform.

517 So, on behalf of DirecTV's more than 20 million
518 subscribers, I would like to thank the committee for its
519 diligence and hard work on STELA reauthorization,
520 particularly Chairman Walden, Congressman Scalise, and
521 Congresswoman Eshoo. We look forward to continuing to work
522 with Republican and Democratic members of this committee as
523 we move forward. I would be happy to answer any questions
524 the committee might have. Thank you.

525 [The prepared statement of Mr. Palkovic follows:]

526 ***** INSERT A *****

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|

527 Mr. {Walden.} Mr. Palkovic, thank you very much for
528 your testimony. We will now go to Marci Burdick, Senior Vice
529 President of Broadcasting for Schurz Communications,
530 Incorporated. Ms. Burdick, it is good to have you back
531 before the subcommittee. We look forward to your testimony.
532 You just need to turn that microphone on.

533 Ms. {Burdick.} You would think the broadcaster could
534 get the microphone. Thank you.

535 Mr. {Walden.} That is all right.

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|

536 ^STATEMENT OF MARCI BURDICK

537 } Ms. {Burdick.} Good morning, Chairman Walden, Ranking
538 Member Eshoo, and members of the subcommittee. I am Marci
539 Burdick, Senior Vice President at Schurz Communications. I
540 supervise radio, cable, and television stations in small and
541 medium markets. I am testifying on behalf of the NAB, where
542 I am the Television Board Chair, and pleased to be here this
543 morning with the two Michaels and the two Matts.

544 The STELA legislation that the committee is considering
545 is, at its core, a satellite bill. Passed in 1988, this law
546 was supposed to be a temporary fix to help satellite carriers
547 better compete with cable by giving them permission to
548 provide distant broadcast channels. 26 years later,
549 satellite is providing local broadcast channels in nearly
550 every market, and is a thriving competitive alternative to
551 cable. So while NAB questions the need for the bill at all,
552 we can support the draft produced by Chairman Upton and
553 Chairman Walden.

554 Our primary interest in the legislation was to prevent

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555 the picking of marketplace winners and losers, which is why
556 we have asked for a clean bill. We are happy to see that
557 this STELA draft steers clear of these kind of provisions.
558 While cable and satellite companies sought to use STELA to
559 gain leverage over broadcasters in retransmission consent
560 negotiations, we continue to believe that free market
561 negotiations are the most appropriate place to establish
562 price. As to any other broader changes to broadcasting
563 rules, NAB firmly believes that those should be debated as
564 part of the comprehensive Communications Act update recently
565 launched by Chairman Upton and Walden.

566 As you know, broadcasters may only operate with a
567 license granted to us by the FCC, and we are by far its most
568 regulated industry. It can be hard to flip a switch without
569 getting permission from your regulator. And while our
570 competitors are often large national companies with no
571 ownership restrictions, we may not own, in most cases, more
572 than one TV station in most markets. While our competitors
573 may show provocative, cutting edge content at any time of the
574 day, broadcasters live by decency rules dictating what we may
575 air. Broadcasters are saddled with innumerable regulations

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576 that are by far more onerous than our cable and satellite
577 competitors.

578 For all of these regulations, there are some benefits
579 that broadcasters receive because we do operate in the public
580 interest. But if Congress opts to remove the benefits of
581 being a broadcaster, then it should also remove the burdens.
582 Deregulation should not be limited to one player in an
583 industry. If your goal is regulatory parity between the
584 various video platforms seated at this table, a comprehensive
585 examination in the Communications Act update is the only way
586 to achieve it.

587 I would like to spend the remainder of my time
588 addressing joint sales agreements, known as JSAs. These are
589 agreements among broadcasters in a market for the joint sale
590 of advertising. While often mischaracterized, these
591 agreements benefit the public, particularly in small and
592 medium markets, where Schurz operates. They result in
593 additional local news, improved public service, and enhanced
594 transmission facilities. For example, our JSA in Wichita,
595 Kansas supports the only Spanish local newscast in the State
596 of Kansas. In Springfield, Missouri our JSA helped take a

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597 struggling station to one that is winning national award for
598 local news coverage.

599 We strongly oppose the extraordinary regulatory path the
600 FCC is taking to make JSAs attributable for the purpose of
601 the broadcast ownership rules. The FCC's proposed rule will
602 require broadcasters to unwind existing agreements, something
603 unprecedented, and amazingly disruptive. This is yet another
604 example of how broadcasters are forced to play by one set of
605 rules, while the rest of the video industry plays by another.

606 And the real issue here is competition for local
607 advertising dollars. Television stations fiercely compete
608 not just with each other, but with cable, Internet, and
609 mobile. Although the FCC and DOJ have said that broadcasters
610 dominate local advertising, you can see in this chart that we
611 have put on the wall that we are seeing, and expecting, big
612 gains from our competitors. The chart proves that today's
613 local advertising market is by far more than just local TV,
614 but, unfortunately, we are being regulated like it is 1960.
615 And, importantly, for all of those entities taking revenue
616 out of a community, local broadcasters are the only ones
617 putting it back in through local news and community service.

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618 Strangely, the FCC apparently doesn't have the same
619 sales concerns as it relates to cable. The same JSA-like
620 agreements, called interconnects, are routine between cable,
621 satellite, and telcos for the joint sale of advertising.
622 What you have are cable companies selling local advertising
623 for their direct competitors, yet they will continue
624 unregulated.

625 In conclusion, we strongly support the bill's language
626 that prevents the FCC from enforcing rules without first
627 collecting empirical data studying the real world impact of
628 JSAs. In reality, these agreements better serve the public
629 interest. To ignore the market pressures facing broadcasting
630 would doom us to the fate of newspapers, and I hope this
631 committee will take an honest fact-based look at the
632 importance of these agreements to localism. We appreciate
633 the hard work of this committee, and I look forward to your
634 questions. Thank you.

635 [The prepared statement of Ms. Burdick follows:]

636 ***** INSERT B *****

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|

637 Mr. {Walden.} Ms. Burdick, pardon me, thank you for
638 your presentation. We will now go to Mr. Michael Powell,
639 President and CEO of the National Cable and
640 Telecommunications Association. Mr. Powell, it is good to
641 have you back before the committee. We look--
642 Mr. {Powell.} Thank you--
643 Mr. {Walden.} --forward to your testimony.

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|

644 ^STATEMENT OF MICHAEL POWELL

645 } Mr. {Powell.} Thank you, Chairman Walden, and thank
646 you, Ranking Member Eshoo, and other members of the
647 subcommittee. It is always a distinct pleasure to have the
648 opportunity to come and testify before you today. I am
649 pleased, on behalf of the National Cable and Telecom
650 Association, representing America's cable companies, to
651 support reauthorization of STELA, including the very
652 important requirement for companies to negotiate broadcast
653 carriage agreements in good faith. We are also specifically
654 pleased to support the carefully selected video reforms that
655 have been included in the discussion draft. All these
656 reforms can be appreciated as both, one, directly benefiting
657 consumers, and, two, restoring a modicum of competitive
658 balance among companies. Both of these themes should always
659 be touchstones of communications policy.

660 Let me turn first to the question of the integration
661 ban. Eliminating the integration ban, an effort led by
662 Congressmen Latta and Green on a bipartisan basis, reverses

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663 an ill-conceived FCC policy, while clearly preserving the
664 statute, and its commendable objective of promoting consumer
665 choice, innovation in competition in set-top boxes, something
666 long championed by Congresswoman Eshoo. To implement the
667 law, the FCC had to overcome a simple obstacle, giving third
668 party boxes access to encrypted signals. Industry worked
669 together to create a separate security module, the cable
670 card, so boxes could be sold unlocked at retail and work in
671 any cable market by simply acquiring the card. Cable card is
672 now a fully realized solution.

673 The FCC, however, stepped beyond the statute and imposed
674 something called the integration ban. The ban forced cable
675 companies to pry security functions out of their leased
676 boxes, and rely instead on cable cards, despite there being
677 no technical need to do so. The theory of the rules was
678 behavioral, not technical, the belief that cable companies
679 would now have an incentive to create, deploy, and support
680 cable cards for third parties. The FCC also, in a bit of
681 industrial engineering, hoped to push consumers toward third
682 party boxes by eliminating a low cost choice from the cable
683 company. This ill-fated policy should be reversed simply

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684 because its costs now clearly outweigh its speculative
685 benefits.

686 For one, the integration ban eliminated a low cost
687 consumer choice, costing consumers nearly \$1 billion in
688 unnecessary expenses. According to FCC data, the integration
689 ban adds over \$55 of additional costs per box, while adding
690 no additional functionality. Secondly, the ban is quite
691 wasteful of energy, imposing on consumers the cost of
692 hundreds of millions of unnecessary kilowatt hours per year.
693 Third, the policy unfairly tilts the competitive playing
694 field. As was mentioned by Chairman Waxman, the integration
695 ban apply only to cable companies, despite them representing
696 only about 50 percent of the market today, down from over 90
697 percent when the provision was passed. DirecTV and Dish,
698 able competitors, are the second and third largest providers,
699 and are free to innovate and develop lower cost alternatives,
700 since they are not subject to the rules. The same is true of
701 telcos, like AT&T. This incongruous application of the law
702 has no defensible rationale, and it is impossible to believe
703 a policy applied to barely half of a national market will
704 have much impact on a national market for set-top boxes.

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705 And whatever the meritorious intentions of the
706 integration ban were, the benefits are speculative at best.
707 Today 44 million cable customers have chosen leased cable
708 boxes that use cable cards. In stark contrast, only 600,000
709 cable cards have been requested for third party devices. The
710 explosion of unimagined video devices and content sources
711 from the likes of Roku, Apple TV, Xbox, Chromecast, and a
712 wrath of Apple iOS and Android devices, is exciting, and
713 likely explains lessening interest in cable set-top box
714 alternative, and points squarely to a market developing
715 solutions to meet consumer preferences.

716 Finally, a word about joint negotiations from
717 broadcasters. We support the effort to rein in abuses of
718 local broadcast stations that have intensified the use of so-
719 called sidecar agreements to jointly negotiate carriage of
720 their signals. Whatever the purported efficiencies of these
721 arrangements are, and there may be some, they have no place
722 invalidating the anti-competitive practice of competitors
723 acting collectively to negotiate prices. As the Department
724 of Justice has found, these practices harm consumers in the
725 form of higher cable prices.

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726 Thank you, Mr. Chairman, and I look forward to your
727 questions.

728 [The prepared statement of Mr. Powell follows:]

729 ***** INSERT C *****

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|

730 Mr. {Walden.} Mr. Powell, we appreciate your testimony,
731 and we will now go to Mr. Matt Zinn, Senior Vice President,
732 General Counsel, and Chief Privacy Officer for TiVo. Mr.
733 Zinn, it is good to have you before the subcommittee. We
734 look forward to your comments.

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|

735 ^STATEMENT OF MATT ZINN

736 } Mr. {Zinn.} Chairman Walden, Ranking Member Eshoo,
737 members of the subcommittee, my name is Matthew Zinn. I am
738 the Senior Vice President for TiVo. TiVo developed the first
739 commercially available digital video recorder, and we have
740 over four million subscribers worldwide, including a million
741 retail subscribers in the United States. I appreciate the
742 invitation to testify before you today.

743 Ordinarily TiVo would not be giving its opinion on
744 legislation--

745 Mr. {Walden.} Mr. Zinn, I wonder if you could pull your
746 microphone up just a little closer?

747 Mr. {Zinn.} Is this better?

748 Mr. {Walden.} Much. Thank you.

749 Mr. {Zinn.} Ordinarily TiVo would not be giving its
750 opinion on legislation to reauthorize compulsory licenses
751 governing the satellite industry. Our business has little to
752 do with STELA. I am part of this panel only because of a
753 completely unrelated provision that was attached to the STELA

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754 reauthorization legislation, pushed by a cable lobbying group
755 to eliminate choice in how consumers watch cable programming.
756 TiVo stands for consumers' choice. It is what we do. I am
757 not here to criticize cable, but certain interests within the
758 cable industry, like this guy, are trying to undermine
759 competition and choice. The provision would appeal the pro-
760 competitive requirement that operators use the same security
761 standard in their boxes as they make available for retail.

762 That is what this is about, the same security standard.
763 Common reliance on the same security standard is a principle
764 the FCC has repeatedly found is a necessary component for a
765 retail market for set-top boxes to emerge. Seeking its
766 repeal is an aberration of cable's generally pro-competitive
767 policy approach. Cable originally provided competition to
768 broadcast networks. Cable has provided competition to
769 telephone networks, and to data networks, and cable did not
770 oppose the original STELA legislation that enabled satellite
771 competition to cable. This provision is also an aberration
772 in terms of how all comparable industries are treated.
773 Consumers should be able to use whatever device they choose
774 to access video programming, just like they can use whatever

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775 computer, telephone, cell phone they want to use to utilize
776 Internet or wireless networks. Video is no different.

777 The Energy and Commerce Committee has been the catalyst
778 for this competition no matter which party has been in
779 control. In 1996 this committee had the wisdom to include,
780 in the landmark Telecommunications Act, a bipartisan
781 provision to unlock devices through which cable subscribers
782 can get their channels. The concept was simple, consumers
783 should have the ability to purchase a set-top box at retail,
784 and not have to rely on renting a box from their cable
785 provider. This provision was intended to do for the video
786 device market what the car phone decision did 45 years ago
787 for the telephone industry, and what Congress is doing right
788 now for consumers with wireless devices. Allowing consumer
789 choice to be undermined stands in opposition to what this
790 committee has stood for, purely because a lobbying group has
791 asked for a provision to be attached for legislation.

792 I am not here to defend the status quo, far from it. We
793 share the cable industry's desire to move on to a new
794 security standard, and we want to work with the industry to
795 find the next generation answer. But passing legislation

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796 eliminating cable operators' incentive to support retail
797 boxes without putting a replacement solution in place is the
798 most twisted approach, given the heritage of the cable
799 industry, and the heritage of this committee, in creating
800 choice.

801 My fellow witness, who is representing the industry here
802 today, called TiVo God's machine because of the choice and
803 control it gave the consumer. It is ironic that he is now
804 leading the charge to kill this type of consumer choice,
805 simply because he is wearing a different hat. TiVo is in no
806 position to advise the committee on the length of the
807 satellite compulsory license, or on retransmission consent.
808 Rather, I am here to say today that a provision that will
809 undermine the retail market for set-top boxes and deprive
810 consumers of choice has no place in a bill originally enacted
811 to give consumers choice in video providers. The committee
812 should be focused on fostering competition, rather than
813 undermining competition and choice.

814 This committee has always stood for competition and
815 choice, and for fostering free market solutions where those
816 can suffice. This committee can play a strong role on this

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817 important pro-competition and consumer choice issue by
818 supporting a process that puts in place a more efficient
819 market solution worked out between the industries.

820 There are already companies who have indicated they have
821 a desire to work with us to do just that, but the 629
822 amendment will kill that process by taking away the incentive
823 for the industry to work out that next generation solution.
824 Such an amendment stands the very heritage of this committee
825 on its head because of the lobbying efforts of a contingent
826 of the cable industry, an industry that has also
827 traditionally stood for competition and consumer choice, an
828 industry that TiVo is helping lead the way to the next
829 generation of television, and an industry now led by a man
830 who, when he was the FCC chairman, made very clear how
831 important TiVo was to the future of the video marketplace.

832 I respectfully urge you to support innovation and
833 consumer choice, and remove the amendment to Section 629 from
834 the STELA reauthorization bill. Thank you very much.

835 [The prepared statement of Mr. Zinn follows:]

836

837 ***** INSERT D *****

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|

838 Mr. {Walden.} Thank you for your testimony, Mr. Zinn.

839 I assume you are opposed to that amendment. Mr. Wood, Mr.

840 Matt Wood, Policy Director at Free Press, we are delighted to

841 have you back before the committee. Please go ahead with

842 your testimony.

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|

843 ^STATEMENT OF MATT WOOD

844 } Mr. {Wood.} Thank you, Chairman Walden, and Ranking
845 Member Eshoo, and esteemed members of the subcommittee, and
846 thank you for inviting me to testify today. My name is Matt
847 Wood, and I am the policy director for Free Press, which is a
848 non-partisan organization with more than 700,000 members
849 across the country.

850 Free Press works for policies that promote competing
851 sources of news and journalism because they are so important
852 for informing our Nation's democracy and powering our
853 economy. Unfortunately, the discussion draft could
854 contribute to the ongoing loss of such competition. My
855 testimony focuses on Section 4 of that draft, which would
856 keep the FCC from addressing undue media concentration, and
857 removing entry barriers for broadcast businesses. I will
858 also talk briefly about Section 6, which would keep the
859 agency from following Congress's direction to increase the
860 choices that people have for set-top boxes and other video
861 devices.

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862 Our media should reflect the full range of experiences
863 and ideas this country has to offer. It is essential to see
864 different viewpoints and hear different voices on the dial,
865 even if they disagree, or rather because they disagree,
866 because robust debate and in-depth coverage keep our republic
867 strong and free. This applies at the national level, and at
868 the local level too, where broadcasting remains a vital
869 source of information about our government and our culture.

870 Television remains the dominant way that Americans get
871 news. Seven in 10 people in the U.S. watch local TV news,
872 almost double the number that watch cable news, or get news
873 online. But the question is, what kind of news are they
874 getting? The answer for too many Americans is they get two
875 or more broadcasts produced by the same company. Sometimes
876 this outsourced news comes from separate news teams, and more
877 often stations have the same reporters air the same stories,
878 and use the same scripts, on two or more channels. In either
879 case, it is the same owner calling the shots.

880 Some broadcasters say this type of sharing keeps
881 multiple newscasts on the air. They claim, oddly enough,
882 that the only way to have competing news is for stations to

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883 stop competing. Let us be clear, when you hear about
884 synergies that make news more attractive to produce, there
885 are just two ways to save money, cutting overhead, and
886 cutting jobs, so one person's efficiency can be another's
887 unemployment. And that is a hardship that affects us all
888 when people losing their jobs are journalists we depend on to
889 dig into the facts.

890 Slashing newsroom jobs can happen slowly, as a
891 broadcaster like Sinclair reduced its average number of
892 employees per station by more than 20 percent. That was 55
893 per station in 2001, down to just 43 today. Or it can be
894 tonight's top story, in late 2010 the anchor at KMSB in
895 Tucson took to the air to report the layoffs that hit him,
896 and 50 of his colleagues. What makes it worse is this
897 runaway consolidation happened right in front of the FCC for
898 years, clearly violating its ownership limits.

899 Section 4 of the draft refers to the local television
900 multiple ownership rule, which permits direct or indirect
901 control of more than one station per market only under
902 certain circumstances. Yet in more than 100 markets, almost
903 half of the TV markets in the whole country, broadcasters use

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904 these outsourcing arrangements to violate the letter and the
905 spirit of this FCC safeguard. They do this with joint sales
906 agreements, or JSAs, shared services agreements, and a litany
907 of others. Combined, these management agreements often
908 transfer control, and the bulk of the affected station's
909 revenues, away from the supposed licensee.

910 These outsourcing deals often prop up shell companies
911 that take away opportunities for competing businesses. As a
912 rule, the FCC shouldn't stand for them. Last month the
913 Department of Justice told the FCC that such covert
914 consolidation can harm competition. Last week FCC Chairman
915 Tom Wheeler called for a vote to treat JSAs above a certain
916 threshold as what they are, signs of ownership by the
917 broadcasters who really run these stations. That would align
918 the FCC with the Securities and Exchange Commission, which
919 doesn't fall for the fiction that these are independent
920 owners. Investors get the truth, and operating stations must
921 treat their so-called sidecar companies as subsidiaries.
922 Even that nickname, sidecar company, shows how much they are
923 driven by conglomerates by NexStar, Raycom, Sinclair, and
924 Tribune. Section 4 could keep the FCC from moving ahead with

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925 its plans to clean up this practice, and prevent unlawful
926 transfers of control.

927 Just a quick word on Section 6 as well, and I won't
928 point to this guy, but I agree with much of what he said.
929 Section 6 could also reduce choices for viewers, and, as Mr.
930 Zinn explained, the integration ban promotes competition for
931 set-top boxes, which incumbents now charge you up to \$20 a
932 month just to rent. Cable customers, of course, should be
933 free to take them up on that offer, but they should have
934 other options too. And they shouldn't believe cable claims
935 that blocking innovation by others is itself a form of
936 innovation.

937 Thank you very much, and I look forward to your
938 questions.

939 [The prepared statement of Mr. Wood follows:]

940 ***** INSERT E *****

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|

941 Mr. {Walden.} Mr. Wood, thank you for your testimony.

942 I will make a couple of comments, and then I have got some
943 questions. I would just say, having been, no secret, in the
944 broadcast business, having had a JSA, they can also be
945 positive in the market too. We actually, as a result of one,
946 in a purchase, were able to restore news. And I am trying to
947 figure out how JSAs have gutted newspapers.

948 There is something going on out in the marketplace out
949 there with newspapers, they are not in a JSA situation, and
950 newsroom after newsroom in the printed press is being gutted.
951 And I am really frustrated with the Federal Communications
952 Commission, and the fact that they don't step up and do their
953 job, as required by statute, by the law, to do their
954 ownership review, look at cross-ownership so we have a
955 strengthened voice out there of First Amendment writers. And
956 so it is just really frustrating, because you can cite all
957 these statistics, but on the ground, when you are meeting a
958 payroll, when you are trying to make things work, there are a
959 lot of other things that come into play.

960 So, Mr. Powell, this draft will relieve cable and their

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961 consumers of a significant cost burden, the cost of making
962 leased set-top boxes compliant with the integration ban.
963 There has been a little bit of opposition to this voiced by
964 your colleagues to your left, and I am aware of that. That
965 was a little understatement there. I want you to explain
966 again, and answer their criticisms of what they raise. They
967 say it is not going to help consumers, and it is going to
968 hurt innovation. How do you answer that?

969 Mr. {Powell.} Sure. Well, thank you. So this guy was
970 a commissioner on the Federal Communications Commission when
971 I said that TiVo was God's machine. That same guy, in that
972 same year, dissented from the FCC's decision to impose an
973 integration ban for two simple reasons. One, it was clearly
974 not compelled by the statute in any way, and shape, or form.
975 What was compelled by the statute was to make sure that third
976 party boxes could get access to the signal by descrambling
977 that signal through a separate security requirement. That I
978 wholeheartedly endorsed then, I continue to wholeheartedly
979 endorse now.

980 The second part was problematic. My belief then, and my
981 belief now, was it took away an innovative third option for

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982 consumers, which is a lower cost box with integrated security
983 that would buy FCC data, costs \$50 per box less, costs
984 consumers less, and be substantially more energy efficient.
985 Many cable companies have been forced to attempt to seek
986 waivers in order to deploy new and innovative boxes,
987 including new software-centric systems. Those waivers have
988 often taken up to two years.

989 Mr. {Walden.} Ms. Burdick, it is expensive to run a TV
990 station or a newspaper in this day and age. I think it would
991 be difficult to make it work, but successful companies with
992 proven track records continue to do so, and do it well.
993 Doesn't it make sense to allow good companies with good
994 resources to put their expertise to work in failing stations
995 or newspapers? Talking about cross-ownership here. We are
996 talking about JSAs used appropriately. Not inappropriately,
997 but appropriately, for the management.

998 Ms. {Burdick.} Thank you, Mr. Chairman. You touched on
999 a key point earlier, and you have echoed it again, is that
1000 the ownership regulations have not kept up for the changing
1001 broadcast marketplace. To put it in perspective, in the
1002 small and medium markets in which we operate, we are governed

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1003 basically under ownership regs that were enacted in 1970.

1004 And I don't know about the members of this committee, but in

1005 1970 I was starting middle school, and listening to Bridge

1006 Over Trouble Water on AM radio. The world has changed.

1007 In 1970, most broadcasters were being paid by their

1008 networks to distribute the product, and in small and medium

1009 markets, that was basically their profit. That has gone

1010 away. And so, as that world has changed, and the economics

1011 have changed, as I mentioned earlier, with people competing

1012 with us for advertising dollars, which supports 90 percent of

1013 our costs, 90 percent of our revenue in local broadcasting

1014 comes from advertising, as that pie is sliced even thinner,

1015 the rules have not kept up. And so, in fact, broadcasters,

1016 like Schurz, have entered into some of these agreements, ours

1017 approved by the FCC, by the way, to create more news, more

1018 jobs, and more public service in the communities that we

1019 serve.

1020 Mr. {Walden.} I appreciate that. And clearly, in the

1021 developing Internet world, you have got stations probably

1022 that have to compete against Internet, cable, everything

1023 else. And it just seems like these ownership rules are

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1024 outdated when Jeff Bezos can pick up the ``Washington Post''
1025 for 250 million, or the owner of the Red Sox can pick up the
1026 ``Boston Globe''. I am trying to figure out why somebody
1027 that is actually in the journalism business can't engage in
1028 that cross-ownership too.

1029 Ms. {Burdick.} Because the rules say we can't.

1030 Mr. {Walden.} And that is why the FCC should do its
1031 job, and follow the law. With that, I will turn over to the
1032 gentlelady from California, Ms. Eshoo.

1033 Ms. {Eshoo.} Thank you, Mr. Chairman. I love hearings,
1034 and I love the mix that is here. Although I wouldn't refer
1035 to former Chairman Powell as that guy, I would say great guy,
1036 but here it comes. Here it comes. I have two quick
1037 questions for you.

1038 The first one, Mr. Powell, I think it is a yes or no
1039 question. On this whole issue of the integration ban, you
1040 had written to me last year and said that it cost consumers
1041 roughly a billion dollars. My question is, would Cable
1042 companies commit to lowering the monthly cost for consumers
1043 that pay to lease the set-top box, particularly those with
1044 advanced functionality, and print this on your customers'

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1045 monthly bill if the integration ban is repealed? I mean, you
1046 know, so much of this is about money, we all know that, so
1047 you don't want this anymore, you have stated your case. Are
1048 you willing to reduce the price, print it on the bill so
1049 consumers know that there is a savings to them?

1050 Mr. {Powell.} I think what we are willing to do is
1051 commit that that money gets invested into the network in a
1052 manner that is beneficial to consumers. When we had the
1053 roundtable, which you were generous--

1054 Ms. {Eshoo.} Right.

1055 Mr. {Powell.} --host, you will remember ACA, a
1056 representative of small cable companies, made the very
1057 compelling point that those additional expenses are expenses
1058 that could not be used by small cable companies attempting to
1059 provide faster broadband speeds, an important, and I think
1060 significant point. So, no, I am not the representative of
1061 the business judgments of exactly how the savings would be
1062 returned, but I do believe it is fair to say--

1063 Ms. {Eshoo.} You know what, I really do think some
1064 thought needs to be given to that.

1065 Mr. {Powell.} Sure.

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1066 Ms. {Eshoo.} I do. I mean, if, in fact, your stand on
1067 behalf of cable operators in the country is what it is. I
1068 mean, everyone is entitled to their view, and what they want,
1069 and what is going to work well for them. People that are
1070 here are obviously speaking to their interests, which is
1071 really fair. We have to protect the public interest in all
1072 of this, try to, anyway. So if it costs consumers, as you
1073 said to me in your letter last year, one billion, maybe there
1074 can be a reduction of one billion somehow.

1075 Now, you described the repeal of the FCC's integration
1076 ban as a narrow fix that will not change cable operators'
1077 requirement to provide the cable cards. But last year, in
1078 your comments before the FCC, NCTA, and at least one of your
1079 member companies, argued that because of the EchoStar case,
1080 cable operators are no longer required to provide or support
1081 cable cards to retail devices. So my question is, which is
1082 it?

1083 Mr. {Powell.} I--

1084 Ms. {Eshoo.} Because those are two distinctly different
1085 arguments.

1086 Mr. {Powell.} I would argue our position is consistent.

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1087 One of--

1088 Ms. {Eshoo.} I know you would say that, but--

1089 Mr. {Powell.} I thought you might.

1090 Ms. {Eshoo.} --they are not, though.

1091 Mr. {Powell.} I thought you might.

1092 Ms. {Eshoo.} Not. I mean, you said something else to--

1093 Mr. {Powell.} Well--

1094 Ms. {Eshoo.} --the FCC, and, you know--

1095 Mr. {Powell.} It is important to note that what the

1096 court found offensive about the FCC rules was it didn't

1097 believe it had the authority to apply them to satellite

1098 companies. Cable companies had actually, through an MOU,

1099 developed the rules. We were the only industry segment,

1100 including this guy, who--

1101 Ms. {Eshoo.} There you go.

1102 Mr. {Powell.} --intervened to defend the rules in

1103 court. When the rules were overturned because the court said

1104 the commission didn't have the ability to apply them fairly

1105 to both satellite and cable--

1106 Ms. {Eshoo.} Um-hum.

1107 Mr. {Powell.} --TiVo and other companies filed, asking

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1108 them to be applied just to cable.

1109 Ms. {Eshoo.} Yeah. Now I want to go to, thank you very
1110 much, to Mr. Zinn and to Mr. Wood. Thank you for being here,
1111 and for your testimony.

1112 Last month most members of this subcommittee voted for
1113 legislation that permits consumers to unlock their wireless
1114 phones so they can be used on any carrier's network. My
1115 question to both of you is, isn't this what Section 629, and
1116 the integration ban, is trying to do? I mean, obviously it
1117 is a softball question, but I think members need to do some
1118 integrating here, in terms of how they have voted on the
1119 floor. And doesn't this unlock the cable set-top box? Is
1120 there a reason to treat video devices differently from
1121 wireless devices?

1122 Mr. {Zinn.} No. I mean, that is a very astute point.
1123 I would first like to thank you for your unwavering support
1124 for consumer choice in set-top boxes, and your leadership on
1125 this issue since 1996. It is very important to consumers,
1126 and there are a lot of consumers who thank you every day
1127 because they love the choice that they have by having access
1128 to TiVo.

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1129 What Congress is trying to do, in terms of unlocking
1130 cell phone, is to give consumers a choice of providers to use
1131 with their phone, and Section 629 is seeking the same result,
1132 give consumers a choice of both equipment and networks,
1133 rather than having to take the lowest common denominator set-
1134 top box that your provider wants to lease you. So I would
1135 say there is no difference.

1136 Mr. {Wood.} Yes, thank you very much. Just very
1137 quickly, I would say they are very much the same principles,
1138 and creating choices for people, rather than restricting them
1139 to what their provider offers, so there are some technical
1140 and legal distinctions, of course. I think the important
1141 thing to note too, at the outset, is about the cost. I would
1142 say that was a no. Obviously, Mr. Powell is not in a
1143 position to promise that companies that are his members will
1144 lower their prices, but we heard that that would not
1145 necessarily lead to lower prices.

1146 And I think that that estimate of a billion dollars a
1147 year too, of the cost of a cable card, is actually based on
1148 2008 data, if I am not mistaken on that. So I think the
1149 costs are also in dispute here, let alone whether those

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1150 savings would be passed on to actual cable customers.

1151 Ms. {Eshoo.} Um-hum.

1152 Mr. {Zinn.} And keep in mind that, if the cable
1153 industry has spent a billion dollars on cable card, which, as
1154 Matt said, is based on 2008 data, before the integration ban
1155 really went into effect, and there was mass production, I
1156 mean, it is hard to believe that this card, this little hunk
1157 of metal, unless it is made of gold, costs \$56. But the
1158 bigger point is, over the past 7 years, cable operators have
1159 billed consumers \$50 billion to lease set-top box equipment,
1160 okay? Seven billion dollars a year for 7 years.

1161 Mr. {Walden.} The gentlelady's time has expired.

1162 Ms. {Eshoo.} Yeah. Mr. Chairman, I just want to say
1163 that I will submit my questions to both Mr. Palkovic and Ms.
1164 Burdick in writing, and I thank you.

1165 Mr. {Walden.} Perfect.

1166 Ms. {Eshoo.} Thank you for testifying. Thank you to
1167 all of you.

1168 Mr. {Walden.} Thank the gentlelady. We will now
1169 recognize the gentlelady from Tennessee, the Vice Chair of
1170 the full committee, Ms. Blackburn, for 5 minutes.

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1171 Mrs. {Blackburn.} Thank you, Mr. Chairman, and thank
1172 you to all of our witnesses.

1173 Ms. Burdick, I want to come to you. Now, your company
1174 is called Schurz, right?

1175 Ms. {Burdick.} Yes.

1176 Mrs. {Blackburn.} Okay, great. And you own broadcast
1177 TV stations?

1178 Ms. {Burdick.} Yes.

1179 Mrs. {Blackburn.} And radio stations?

1180 Ms. {Burdick.} Yes.

1181 Mrs. {Blackburn.} Okay. Do you require compensation
1182 for the re-trans of your broadcast TV stations?

1183 Ms. {Burdick.} Yes.

1184 Mrs. {Blackburn.} Okay. And compensation for the
1185 copyright of original content that you produce?

1186 Ms. {Burdick.} Yes.

1187 Mrs. {Blackburn.} Yes, okay. Does Schurz compensate
1188 the copyright holders of content it uses for its broadcast TV
1189 stations?

1190 Ms. {Burdick.} I think you are asking, as you did last
1191 time I was here, about radio, and the compensation of radio--

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1192 Mrs. {Blackburn.} I am asking for a yes or no.

1193 Ms. {Burdick.} Yeah. Ask the question again, if you
1194 wouldn't mind?

1195 Mrs. {Blackburn.} Do you compensate the copyright
1196 holders of content it uses for broadcast--

1197 Ms. {Burdick.} Yes.

1198 Mrs. {Blackburn.} --on your TV stations? Okay. Do you
1199 pay a performance right for the music that you broadcast over
1200 your radio stations?

1201 Ms. {Burdick.} We pay ASCAP and BMI, and SESAC.

1202 Mrs. {Blackburn.} That is not the question that I asked
1203 you. The answer is no.

1204 Ms. {Burdick.} Um-hum.

1205 Mrs. {Blackburn.} Ms. Burdick--

1206 Ms. {Burdick.} That is correct.

1207 Mrs. {Blackburn.} That is correct, you are right.

1208 Ms. {Burdick.} Yeah, the--

1209 Mrs. {Blackburn.} The answer--

1210 Ms. {Burdick.} --answer is no--

1211 Mrs. {Blackburn.} --is no.

1212 Ms. {Burdick.} --that is correct. You are right.

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1213 Mrs. {Blackburn.} And if you can provide a
1214 Constitutional justification for that inconsistency, God
1215 bless your heart, because, I have to tell you, there is not
1216 one. And it is intellectually inconsistent, and I think that
1217 you are fully aware of that.

1218 Okay. In your testimony you state that re-trans consent
1219 negotiations are free market negotiations, and that the major
1220 network broadcast content is the most sought after and
1221 valuable content today. You then go on to advocate for our
1222 nation's 22 year old regulatory structure dictating the terms
1223 of these negotiations. So how is it possible that, in fact,
1224 free market negotiations, as you say, if we live under a
1225 regulatory structure that dictates to one party details like
1226 where your stations must appear on the cable lineup?

1227 Ms. {Burdick.} Um-hum. Thank you for the questions. I
1228 appreciate your passion on some of these issues. I guess I
1229 would look back, in researching this, and I went back into
1230 history. The first report and order of the FCC on what was
1231 then cable antenna television said one important thing that
1232 has carried through, and Congress has supported in every
1233 iteration of its action, and that is that CATV should carry

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1234 local stations because it supplements, not replaces, local
1235 stations, and non-carriage is inherently contrary to the
1236 public interest. For all of the things that we have talked
1237 about, the floods in your district this year, Internet didn't
1238 make up for the service that local broadcaster provide. We
1239 provide an inherent and important public service that is not
1240 replicated anywhere.

1241 Mrs. {Blackburn.} Um-hum. Well, no one is arguing
1242 about the public service. What I am asking you is about free
1243 market negotiations, and you say you own the most valuable
1244 and sought after content. Then why do you need this archaic
1245 regulatory structure? Wouldn't a pay TV provider negotiate
1246 to place your content on their basic tier if it is indeed the
1247 most sought after programming?

1248 Ms. {Burdick.} Yeah, and I guess I didn't make my point
1249 clearly, but the point is that when the basic tier
1250 requirement was enacted, it was because Congress thought it
1251 important to preserve the values of localism, and to require
1252 that local televisions be seen by all consumers, and placed
1253 on that basic tier, and we believe that today.

1254 Mrs. {Blackburn.} Well, I admire that you are desiring

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1255 to move to parity and deregulation, and work toward that, and
1256 I know you are going to continue along that vein. Let me ask
1257 you this. In your opinion, would true regulatory parity in
1258 the video marketplace allow you the freedom to negotiate like
1259 non-broadcast owners?

1260 Ms. {Burdick.} You know, we have said in the context of
1261 this bill that we would embrace a wholesale view of the
1262 ownership and the regulatory versus deregulatory issues that
1263 affect the video marketplace. Unfortunately, most of the
1264 things that we have been discussing only benefit one side of
1265 the table, not the other. And so that is why we support a
1266 holistic review of the ownership rules, and the rules under
1267 which we operate today.

1268 Mrs. {Blackburn.} Can you envision a world in which you
1269 are treated like a cable company?

1270 Ms. {Burdick.} You know, I guess I will go to Jay
1271 Carney's line of the last couple of days, I am always
1272 hesitant to predict the future.

1273 Mrs. {Blackburn.} All right, fair enough. I yield
1274 back.

1275 Mr. {Walden.} Thank you very much. The gentlelady

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1276 yields back, and the Chair now recognizes for 5 minutes the
1277 gentleman from Pennsylvania.

1278 Mr. {Doyle.} Thank you, Mr. Chairman. Thank you to the
1279 witnesses for your testimony. I am glad to see the
1280 provisions included in this draft bill that address joint
1281 negotiations of the retransmission consent. I believe these
1282 negotiations can cause anti-competitive behavior, and can
1283 lead to increased prices paid by consumers, so I am glad to
1284 see that the issue is at least being addressed in the draft
1285 bill, and is being addressed by Chairman Wheeler at the FCC.

1286 Mr. Powell, let me ask you, do you think the exemptions
1287 in Section 3 of the draft bill, that allows for joint
1288 retransmission consent, are necessary, or do you think they
1289 detract from the goal of this provision?

1290 Mr. {Powell.} I think our view is the practice of joint
1291 negotiations is of great concern. The exception attempts to
1292 exempt companies that are genuinely owned. The practical
1293 challenge there is if somebody literally owns both stations,
1294 hard to imagine they are not privy to all the same
1295 information. As a joint negotiator, though, we would be more
1296 than happy for those not to be permitted either. I do think

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1297 the companion efforts by Chairman Wheeler, in the context of
1298 good faith, to address undue power among top four stations is
1299 a valuable complement to the statute.

1300 Mr. {Doyle.} Mr. Wood, how about you?

1301 Mr. {Wood.} I think that is right. I think that, as
1302 Mr. Powell said, that you can have a situation where, even if
1303 you prohibit explicit joint negotiations at the table, if you
1304 have a single entity that has the books, and has the power to
1305 control the activities of both stations, it will have much
1306 more leverage, and much more view into what the two
1307 agreements say. So we certainly think that there are some
1308 competitive harms that aren't necessarily addressed
1309 completely by Section 3, and that is why we are looking also
1310 to the FCC to look further into the practice.

1311 Mr. {Doyle.} Mr. Wood, let me ask you, you and others
1312 point out in your testimony that the FCC will consider
1313 changing the way it attributes ownership of broadcast
1314 stations, based on general operation and service agreements.
1315 Section 4 of the draft bill would force the FCC to complete
1316 its quadrennial review in advance of modifying these types of
1317 rules. What do you think the effect of this provision would

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1318 be on the FCC's ability to make rules in this area?

1319 Mr. {Wood.} Well, we think it would be harmful, and I
1320 don't disagree with Chairman Walden's statement that, of
1321 course, the FCC should complete its quadrennial review. It
1322 has that obligation, and we have called on it to do that in a
1323 data-driven fashion several times. Not only to look at the
1324 changing business models over time, but the harms of media
1325 consolidation, and of undue concentration at the local level.
1326 However, we see Section 4 as prohibiting the FCC from
1327 enforcing its rules today, and going after violations of its
1328 multiple ownership rules.

1329 Chairman Walden also talked about the appropriate use of
1330 these agreements. There can be some synergies and some
1331 savings if back office operations are combined for sure, but
1332 what we are most concerned about are operational control, de
1333 facto transfer of control, where you have one station that is
1334 not only calling all the shots for the other, but producing
1335 the news, has every right to buy the station, it really has
1336 full control over its partner and its sidecar company, as
1337 they are sometimes called.

1338 Mr. {Doyle.} Thank you. I want to give Ms. Burdick a

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1339 chance to also comment on that. I take it you might not
1340 agree.

1341 Ms. {Burdick.} Thank you, Mr. Doyle. Two points.

1342 First of all, on the joint negotiation, you are talking about
1343 one side of the negotiation equation, and not the other.

1344 Cable companies also link their negotiation strategies
1345 through consultants, or the ACA basically advises its members
1346 to employ the same law firm, that has access to all the data.

1347 So let us be fair in our approach when we talk about the
1348 negotiations, number one. But number two, on the JSA/SSA
1349 issue, Free Press particularly will often repeat fiction as
1350 fact. It doesn't make it so. And, in fact, many of these
1351 operations extend local news and public service that would
1352 not exist.

1353 Very quickly, in 2009 Schurz had a station, the only one
1354 we own that is not number one in its market, that lost money
1355 for 12 years after launching a full complement of news. We
1356 could no longer, in the recession years, support it through
1357 our other operations. We had two choices, go out of business
1358 in news, and just become an entertainment provider, or enter
1359 into an agreement that preserved and added news with another

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1360 entity, which is what we did.

1361 Mr. {Doyle.} Thank you very much. And my last
1362 question, Mr. Zinn, TiVo provides a competitive set-top box
1363 product that competes with set-top boxes provided by the
1364 MPVDs. From your perspective, what has been the value of
1365 competition to consumers in the set-top box marketplace, and
1366 how has cable card failed to deliver that experience, and
1367 what reforms do you think need to be made to the program?

1368 Mr. {Zinn.} There is a lot in those three questions.
1369 The value of competition in the set-top box marketplace is a
1370 very good question. Of course, you can't quantify exactly
1371 what the value would be, but if you look at other markets in
1372 the United States, you see, you know, you look at phone,
1373 wireless, personal computing, you can get a sense of what
1374 competition brings, and that is innovation, choice, jobs, and
1375 lower costs for consumers.

1376 In the set-top box market you can just look at what
1377 TiVo, one little company, has been able to accomplish. We
1378 invented the DVR. We were the first to bring Amazon over the
1379 top services to the television. We were the first integrate
1380 Internet services with cable services in one user interface.

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1381 We were the first to allow you to move content from your
1382 television to your computer and mobile devices. And we are
1383 on the cusp of an IP transition in video, and all the
1384 innovation that that can release.

1385 And, really what we are looking for here, if cable wants
1386 to move on from cable card, and it is not energy efficient,
1387 and it is too expensive, we say, great. Just give us another
1388 solution that we can use to provide competition to consumers.
1389 Obviously, if the cable industry wants to get away from cable
1390 card, they have got something in mind, so just share it. And
1391 so my point is, you know, will you share the solution? Will
1392 you do that?

1393 You know, in terms of the current regime, there have
1394 been multiple failures. First of all, there was a failure of
1395 the FCC not to ensure that retail boxes out of the gate had
1396 access to all cable content. So, you know, right at the
1397 gate, retail boxes were put at a competitive disadvantage.
1398 Then there was a failure by the FCC that the cable card
1399 standard was not competently supported by cable operators.
1400 And the integration ban, which is really a light regulatory
1401 touch, designed to just make sure if the cable industry is

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1402 using the same security standard as retail, they are going to
1403 support it, right? Otherwise they have no incentive to
1404 support it, and we have 10 years of evidence on that. Mr.
1405 Powell can dispute that, but the evidence is in the record.
1406 And then the third failure--

1407 Mr. {Walden.} I am sorry, the gentleman's time has
1408 expired.

1409 Mr. {Doyle.} Mr. Chairman, thanks for your indulgence.

1410 Mr. {Walden.} Thanks very much. Gentleman yields back.
1411 And at this time the Chair recognizes himself for 5 minutes.
1412 And, interestingly enough, Mr. Powell, I think I will start
1413 with you. But, again, thank you very much for testifying
1414 today. And, you know, one of the things that has been out
1415 there, if the integration ban is eliminated for loose-top
1416 boxes, is the cable industry still going to support cable
1417 cards?

1418 Mr. {Powell.} Absolutely. A couple quick things to
1419 say. First of all, it is important to remember that, even if
1420 Congress passed this provision eliminating the integration
1421 ban, we would have absolute legal obligation to continue to
1422 provide separate security and cable cards. Unless you

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1423 believe we just completely flaunt the law, with no
1424 consequences at the commission, that will continue to be the
1425 case.

1426 Secondly, we have 44 million subscribers of our own who
1427 use cable cards. Failure to support them, and failure to
1428 support those consumers, will have dire competitive
1429 consequences, particularly since our principal competitors
1430 are collected in industries that have none of those
1431 requirements, and are able to offer competitive alternatives
1432 if we fail to deliver an adequate experience.

1433 The third thing I think is important for the committee
1434 to understand is the majority of revenue today that TiVo
1435 derives, and as their CEO has noted, they have deals with 10
1436 of the top 20 cable companies. The majority of what they are
1437 doing is providing cable boxes through cable companies.
1438 Those deals with small companies, like Suddenlink, and
1439 others, meant that they have to continue to support that as
1440 their principle cable equipment. So we think the incentives
1441 remain strong to comply with the law that we have a duty to
1442 abide by.

1443 Mr. {Walden.} So with the language in the draft right

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1444 now, is Section 629 repealed, with the language from my
1445 section dealing with the integration ban?

1446 Mr. {Powell.} Absolutely not. I think, as I mentioned
1447 earlier, I had the privilege of sitting on the commission
1448 during implementation of Section 629. I think the thing that
1449 trouble us at the time, that troubles us today, is that this
1450 was not in any way a requirement of the statutory provision.
1451 An elimination of an FCC rule in this context does not in any
1452 way affect the other provisions of the statute.

1453 Mr. {Walden.} Thank you. Going on, how is the cell
1454 phone unlocking different from Section 629?

1455 Mr. {Powell.} Well, I giggle a little bit, because the
1456 analogy is completely inept. The third party box--

1457 Ms. {Burdick.} Thanks.

1458 Mr. {Powell.} It was from this guy. I mean, with all
1459 respect, here is the difference. It is not an accurate
1460 analogy because the third party set-top box, in essence,
1461 comes unlocked. Nothing locked about it. The cable card is
1462 what allows you to put it into the box and have it work. It
1463 is important to remember cable boxes in cable systems have no
1464 reason. They can't work on any other system. A Comcast box

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1465 does not work in a Time-Warner cable system. They are unlike
1466 the portability of cell phones, or the portability of other
1467 devices that are trying to change networks. Leased boxes
1468 never change networks. The boxes that do change networks are
1469 third party boxes, and they are unlocked, and that is what
1470 the cable card provides.

1471 Mr. {Walden.} And let me just continue on. Some have
1472 raised concerns that the elimination of the integration ban
1473 will greatly harm consumer choice, thwart competition, and
1474 seriously damage the retail market for set-top boxes, and
1475 remove incentive for cable to develop a new generation
1476 solution or IP standard that is compatible with competitive
1477 navigation devices. How would you address those claims?

1478 Mr. {Powell.} I think the one thing we have to take
1479 real cognizance of is there has been an explosion of video
1480 devices and new content sources that were hardly imagined in
1481 1996, or 1998, when these provisions were implemented. The
1482 list is legion. Roku, Apple TV, Xbox, Vuda services, Netflix
1483 services, all the iOS devices, all the Android devices, all
1484 of which are platforms today for distributing video content,
1485 including cable content. That market is being developed by

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1486 the marketplace at an extraordinarily fast clip.

1487 Our view is that market innovation is moving to meet
1488 demand, is moving to make consumer preferences, and doesn't
1489 need an additional intervention in order to make it succeed.

1490 Mr. {Walden.} You know, when you talk about things
1491 moving quickly over the last several years, you know, if you
1492 go back just 10 years to where we are today, what would you
1493 say, on the innovation side, has really transpired in that
1494 period of time, and where do you think in the next maybe 5 to
1495 10 years we are going to be?

1496 Mr. {Powell.} I think it is completely unimaginable.
1497 My opinion is, we are only in the third or fourth inning of
1498 the transformational power of the Internet. And I think the
1499 ability to reduce video content to bits of zeroes and ones,
1500 and distribute them over any existing data infrastructure, or
1501 any existing data capable devices means our old fashioned
1502 ways of looking at things, and stovepipe ways, are going to
1503 be eliminated. And the consumers are going to be, I think,
1504 the great winner, even if it is a stress for many of our
1505 companies.

1506 Mr. {Walden.} Well, thank you very much, and my time

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1507 has expired, and I yield back. And the chair now recognizes

1508 Mr. Welch.

1509 Mr. {Welch.} Thank you very much. I appreciate the
1510 hearing, and appreciate all the witnesses. You know, there
1511 are a lot of good things that are happening. The programming
1512 has never been better. That is what most people say, and a
1513 lot of my constituents say. The choices have never been
1514 wider, but the cost has never been higher. That is the real
1515 challenge. And that is what I am hearing about from a lot of
1516 folks in Vermont, and I know that is true for all of us here,
1517 and the consumer just doesn't have much control, other than
1518 to just pull the plug, which is not what we want them to
1519 face. And I am wondering, just quickly, is there anything in
1520 the Satellite Reauthorization bill that is going to start
1521 addressing the cost, which, according to the FCC statistics,
1522 is going up about twice the rate of inflation every year?
1523 Just quickly, is there anything? Each of you can answer
1524 that. And briefly, because I don't want to take up all my
1525 time on this. Mr. Palkovic?

1526 Mr. {Palkovic.} Sure. On behalf of DirecTV, there is a
1527 very important change here, and that is dealing with the

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1528 joint negotiation of stations that are not commonly owned--

1529 Mr. {Welch.} Okay.

1530 Mr. {Palkovic.} --to negotiation retransmission--

1531 Mr. {Welch.} Ms. Burdick?

1532 Mr. {Palkovic.} --access greatly.

1533 Ms. {Burdick.} We remain free and over the air at all

1534 times, so the consumers have always had the choice to get us

1535 for free.

1536 Mr. {Welch.} Well, wait a minute, but you get involved

1537 in the retransmission too, and that adds to the cost to the

1538 consumer, right?

1539 Ms. {Burdick.} All broadcasters in a market combined

1540 don't earn what ESPN alone earns.

1541 Mr. {Welch.} Well, that isn't exactly responsive.

1542 Ms. {Burdick.} We--

1543 Mr. {Welch.} I mean, you know, eBay makes more than

1544 some broadcasters.

1545 Ms. {Burdick.} eBay makes more--

1546 Mr. {Welch.} My point is--

1547 Ms. {Burdick.} True, and they are not--

1548 Mr. {Welch.} --that your answer--

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1549 Ms. {Burdick.} --creating local--

1550 Mr. {Welch.} --was not an answer.

1551 Ms. {Burdick.} --content either. Yeah.

1552 Mr. {Welch.} It was a good answer--

1553 Ms. {Burdick.} Thank you.

1554 Mr. {Welch.} --but not a responsive answer.

1555 Ms. {Burdick.} Yeah. We have an opportunity to
1556 negotiate the value in the free marketplace with cable and
1557 satellite providers that are much bigger than we are. We
1558 don't earn--

1559 Mr. {Welch.} Okay.

1560 Ms. {Burdick.} --what the viewership would suggest we
1561 share.

1562 Mr. {Welch.} I don't have much time, so let me go on.

1563 Mr. Powell, anything--

1564 Mr. {Powell.} I would just agree with Mr. Palkovic on
1565 the JSAs. I do think the Department of Justice has
1566 explicitly found that these practices result in higher prices
1567 for consumers. And I won't repeat my comments, but my
1568 belief--

1569 Mr. {Welch.} Okay.

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1570 Mr. {Powell.} --that the integration ban has that
1571 virtue as well.

1572 Mr. {Welch.} Thank you. Mr. Zinn?

1573 Mr. {Zinn.} I think Mr. Powell clearly stated that
1574 consumers aren't going to see any benefit, monetarily, from
1575 an integration ban repeal.

1576 Mr. {Welch.} Okay. Mr. Wood?

1577 Mr. {Wood.} I would agree with Mr. Palkovic and Mr.
1578 Powell that the JSA ban, if implemented correctly, I am
1579 sorry, the joint negotiation ban could reduce--

1580 Mr. {Welch.} Okay.

1581 Mr. {Wood.} --costs. I do think, though, giving people
1582 choice over which channels they pay for would do even more to
1583 do that, and that is why we supported Ms. Eshoo's bill and
1584 Ms. Lofgren's bill on that subject.

1585 Mr. {Welch.} Okay. Thank you. By the way, I
1586 understand that this bill is not all around that. It is
1587 really just trying to maintain a status quo and level playing
1588 field, with some modest changes.

1589 One of the other questions I have is this, to Mr.
1590 Powell. I understand the NCTA supports the eliminating the

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1591 retransmission consent stations from the basic must-buy tier,
1592 and I know there is a dispute on that. And I just want you
1593 to speak to that, and then perhaps Ms. Burdick.

1594 Mr. {Powell.} Just briefly, it is the position of NCTA
1595 that must-buy has outlived its usefulness, and is a provision
1596 ripe for repeal for the reasons that I think we have heard
1597 expressed here by the committee today.

1598 Mr. {Welch.} Okay. Ms. Burdick?

1599 Ms. {Burdick.} I find it interesting that cable likes
1600 to talk about tiering only when it is with broadcast
1601 stations, and not other programming.

1602 Mr. {Welch.} You, I think, quite accurately pointed out
1603 how things are totally different now, but, you know, most
1604 people used to get the big network broadcast for free. And
1605 now, Vermonsters get all of their signals through satellite or
1606 cable, and then what they could still get for free with an
1607 antenna, they don't get for free if that gets bundled up. I
1608 think that is the point you are making, isn't it, Mr. Powell?

1609 Mr. {Powell.} Yeah. We have to be candid that this is
1610 the only class of program to which the government, by law,
1611 requires an American consumer to purchase as a predicate to

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1612 anything else the consumer might want. That just is a
1613 difference of substantial magnitude to any other--

1614 Mr. {Welch.} Right.

1615 Mr. {Powell.} --kind of commercially negotiated--

1616 Mr. {Welch.} And that was actually, as I heard Ms.
1617 Blackburn's question, the tone of her question. She was kind
1618 of getting to that situation. But I just want to say, I
1619 appreciate you all coming in. I mean, this is so important
1620 to the economy and to consumers, and we are not going to be
1621 able to deal with this now.

1622 The changes that you have described that have occurred
1623 are enormous. The programming, everyone is saying, has never
1624 been better, and obviously there is got to be a financing
1625 mechanism that is going to support the infrastructure and the
1626 creative content. But, bottom line, we have got to have some
1627 provisions in here that address the consumer, and their
1628 inability to be at the table, by and large, when these very
1629 important negotiations with very legitimate competing
1630 interest are taking place.

1631 So, going forward, I just implore all of you to remember
1632 that, even as you make compelling arguments for the interests

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1633 that you represent, that are important to consumers, that the
1634 outcome here be something that is going slow this rate of
1635 growth that is going at twice the rate of inflation. And I
1636 yield back.

1637 Mr. {Walden.} Thank you very much. The gentleman
1638 yields back, and the chair now recognizes for 5 minutes the
1639 gentleman from Louisiana.

1640 Mr. {Scalise.} All right. Thank you, Mr. Chairman. I
1641 want to start with Ms. Burdick. And let me first say I have
1642 always felt that broadcasters should be compensated for their
1643 content, for the programming that you provide. Where we
1644 probably disagree is I don't believe every single cable
1645 subscriber should be mandated by the Federal Government to
1646 buy what anyone else might be selling. That is something
1647 that two parties should be negotiating, not the Federal
1648 Government coming in and say, you have to do this this way.
1649 Let the parties get in a room, and you all have negotiations.
1650 But I guess where my issue has been has that, in many cases,
1651 there are federal mandates that set the stage for how those
1652 negotiations even begin.

1653 And so, with that, my question would be, do you think it

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1654 is fair that the Federal Government mandates that cable
1655 subscribers, you know, in my district the average household
1656 income is around \$45,000. And so, you know, should those
1657 people be required by law to buy broadcast programming, as
1658 well as the other programming that, you know, maybe three or
1659 four or five other stations along with it, rather than just
1660 letting it be a free market negotiation between two parties?

1661 Ms. {Burdick.} You know, I think we have always
1662 expressed a willingness to enter and be engaged in those
1663 discussions. But, as I said in my testimony, broadcasters
1664 have regulations that other people don't, and some with that,
1665 and some public service obligations, came some benefits.
1666 That was one of the benefits. And in every--

1667 Mr. {Scalise.} Invaluable spectrum that goes along with
1668 it. I know you have mandates there--

1669 Ms. {Burdick.} Well, I have paid for my--

1670 Mr. {Scalise.} --but you have--

1671 Ms. {Burdick.} --spectrum. Satellite got theirs for
1672 free too. So, I mean, I think you can have an intellectual
1673 argument, but you need to take a wholesale look, and not just
1674 pieces that are in this bill.

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1675 Mr. {Scalise.} Right, and I would agree. That is why I
1676 do think we need to take that wholesale view of this. And,
1677 you know, we are starting that conversation in this STELA
1678 reauth, which, you know, we will get into maybe later. There
1679 has never been a clean STELA bill, so clearly we are starting
1680 to have some of those conversations, and trying to start
1681 levelling that scale, but clearly we have got a long way to
1682 go to get to a true level negotiation. And now the broader
1683 discussion will occur after we are removed with this
1684 conversation. And I think the chairman of both the full and
1685 subcommittee agree that we have to have a broader discussion
1686 on that.

1687 I guess that brings me to you, Mr. Powell. It is one
1688 thing for both parties in a negotiation to arrive at a
1689 tiering plan, or channel packaging, and that is something,
1690 you know, I sure think that should be a negotiation that you
1691 all enter into. You know, but right now it is a different
1692 dynamic, where the government is mandating that is how you
1693 have to walk out of the room if you have that negotiation.

1694 And, you know, one of the things that we have been
1695 starting to highlight is, you know, when you look at the '92

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1696 Cable Act, and some of the things your companies have to deal
1697 with, you know, I love this brick phone, because it
1698 underscores just the point that the law was written at a time
1699 when this was your smartphone. This was the main
1700 telecommunications device.

1701 And so, when we think about these laws, I think it is
1702 always important to go back and say, these laws were written
1703 when this was the smartphone of the day. This was the most
1704 telecommunications power you could put in. And now, of
1705 course, the things you could put into this little device, you
1706 can actually stream video, you can pull up programs that were
1707 on TV last night. I still have not--

1708 Mr. {Walden.} Do you still use that? Is that still--

1709 Mr. {Scalise.} I have tried to get an arrangement where
1710 I could at least get some kind of a signal on this thing, and
1711 for some reason it doesn't work, but, unfortunately, the laws
1712 don't work either. They have updated this device, by the
1713 way, and you can go through about 50 different iterations to
1714 this device, yet we don't have any iterations of updating of
1715 the laws that still govern how things operate.

1716 So I want to ask you, Mr. Powell, how do your companies

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1717 deal with a legal environment that was written, and still
1718 functions today, under laws that were based on this
1719 technology, when today you are competing in a world with this
1720 technology?

1721 Mr. {Powell.} Yeah. Just in short, I think it is
1722 challenging because the market reality, the facts of not only
1723 the products, but the market structures, who are your
1724 competitors, what are your innovative choices, all are things
1725 that, when layered over the statute, which is, at best,
1726 ambiguous, because it is not clearly applicable or
1727 appreciable compared to what is really happening. And it
1728 leads to a lot of delay. The one thing that I would argue
1729 that it does, quite aggressively, is create uncertainty and
1730 delay. Things that should be done quickly in Internet time
1731 now take years sometimes of resolution at the commission just
1732 because of a statute that doesn't imagine the changed
1733 technical circumstances of the market.

1734 So it is challenging. They do their best to work around
1735 those ambiguities. And I don't think we are even here to say
1736 that deregulation for its own sake is even the answer. But
1737 law should at least honestly and accurately reflect the

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1738 reality of the marketplace it is purporting to oversee. And
1739 when that is as badly out of alignment as some of these rules
1740 are, I think it is certainly time to re-evaluate their--

1741 Mr. {Scalise.} Yeah, I think it is pretty clear that
1742 the time for re-evaluation is long past. Again, I have been
1743 through, fortunately, multiple different phones. I actually
1744 couldn't afford one of these when I was a college student,
1745 but a lot of college students, and, in fact, my 6-year-old
1746 daughter has one of these, and she knows how to use it
1747 probably better than me. But if you look at the iterations
1748 of growth and innovation between these two devices, it just
1749 shows you how outdated the current laws are. That Congress
1750 hasn't gone and revised and updated those laws since this was
1751 the device, long past time that we do it.

1752 I am glad we are at least starting that conversation,
1753 putting a little bit of those concepts in STELA, but knowing
1754 that, longer term, the bigger issues have to be confronted.
1755 And they have got to be confronted soon if we are going to
1756 benefit consumers, who are the people that we represent. It
1757 is the people that all of you service in your lines of
1758 business. So I look forward to that broader discussion as we

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1759 get through this. And I appreciate the Chairman--

1760 Mr. {Walden.} Thank you.

1761 Mr. {Scalise.} --and Ms. Eshoo's--

1762 Ms. {Eshoo.} Thank you.

1763 Mr. {Scalise.} --efforts as well, and we will continue
1764 working forward to get to that goal. Yield back the balance
1765 of my time.

1766 Mr. {Walden.} We appreciate you bringing that black and
1767 white TV with you.

1768 Ms. {Eshoo.} Yeah.

1769 Mr. {Walden.} We will now turn to gentlelady from
1770 Colorado, Ms. DeGette, for 5 minutes.

1771 Ms. {DeGette.} Thank you, Mr. Chairman. I was going to
1772 suggest that, given the topic of this bill, maybe Mr. Scalise
1773 would like to bring in his TV from that era the next time he
1774 comes. Yeah. I want to add my thanks to the Chairman for
1775 issuing a discussion draft, and trying to work in a
1776 bipartisan way on this bill. It has always been a bipartisan
1777 bill. And, while we have some concerns about it, I think we
1778 can all work together to bring it to a markup.

1779 There are a couple of issues that I want to talk about

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1780 today. The first one is blackouts, because we have all been
1781 talking about how our consumers feel, and a lot of Americans
1782 don't really understand what STELA is, or retransmission
1783 consent, but they can clearly see what happens when
1784 negotiations break down, and there is a blackout. And I will
1785 tell you, if the Bronco games got blacked out, I would hear
1786 universally from all of my constituents in Denver and the
1787 surrounding vicinity.

1788 We have heard from witnesses representing all parts of
1789 the video marketplace that blackouts are unfair to consumers,
1790 and on behalf of the consumers, I agree. I think we need to
1791 talk, as we look at reauthorization, and I am happy to see
1792 the diversity of opinions today, about what we can do, as we
1793 look at the reauthorization, to consider the impact on that
1794 growing problem.

1795 So I want to start with you, Mr. Powell, and ask you if
1796 you think Section 3 of the draft legislation would make
1797 blackouts more or less common for consumers?

1798 Mr. {Powell.} I personally believe it is a useful step
1799 to making them less of a problem for consumers.

1800 Ms. {DeGette.} Ms. Burdick, what is your view on that?

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1801 Ms. {Burdick.} I said, when I was here last time that,
1802 you know, we have agreed to support the draft because I
1803 think, frankly, it is kind of a stocking horse. We do 100
1804 agreements every cycle. In one time in 10 years has an MVPD
1805 asked for separate negotiation. And when asked again the
1806 next time, they said it is more efficient to do it together.
1807 We have said all along, if they want to do them separately,
1808 they can.

1809 Ms. {DeGette.} So you--

1810 Ms. {Burdick.} It will add cost, it will add time,
1811 particularly to smaller broadcasters. And that--

1812 Ms. {DeGette.} But--

1813 Ms. {Burdick.} --those costs will have to be--

1814 Ms. {DeGette.} --to--

1815 Ms. {Burdick.} --passed on.

1816 Ms. {DeGette.} --reiterate my question, do you think
1817 Section 3 would make blackouts more or less common for
1818 consumers? I appreciate your being part of the time, but--

1819 Ms. {Burdick.} I think the negotiations are still going
1820 to be tough, particularly when you are the small guy--

1821 Ms. {DeGette.} Do you think blackouts will be more or

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1822 less common, Ms. Burdick?

1823 Ms. {Burdick.} I have no way to gauge it.

1824 Ms. {DeGette.} Okay. Mr. Palkovic?

1825 Mr. {Palkovic.} They will be less, significantly less.

1826 There is no question about it.

1827 Ms. {DeGette.} Okay. I think I will leave it at that.

1828 I want to talk for a minute about shared service agreements.

1829 I am pleased that the draft bill is recognizing that we

1830 should not permit broadcaster coordination for retransmission

1831 consent, but shared service agreements also have an impact on

1832 jobs and local news. And so, if we can all agree that

1833 broadcaster cooperation can harm competition, it seems

1834 inconsistent that then, in the bill, we would tie the FCC's

1835 hands and prevent the agency from addressing these harms

1836 outside the retransmission consent product.

1837 So, Ms. Burdick, I want to ask you, the National

1838 Association of Black Journalists recently wrote the FCC,

1839 supporting Chairman Wheeler's proposal on shared service

1840 agreements. They said many of the stations that are now part

1841 of a shared service agreement had working news departments

1842 with journalists who covered local news. Those news

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1843 departments were closed for various reasons, disrupting the
1844 lives and careers of the affected journalists. How do you
1845 respond to that allegation by the National Association of
1846 Black Journalists?

1847 Ms. {Burdick.} Yeah. I think they have changed their
1848 position, because they have since sent a letter indicating
1849 that they have come around the bend on that issue, because
1850 they have seen the fact that minority ownership is ending. I
1851 can speak for our company's experience, and I mentioned the
1852 Augusta experience, where our choice was only going out of
1853 the local news business, or entering into agreement.

1854 We have two others, one in Kansas, represented by people
1855 here today, where we began news in Spanish with a JSA with
1856 Univision. It is the only local newscast in Spanish, does
1857 emergency alerts and weather warnings, in the State of
1858 Kansas. The second is in Springfield, Missouri, where we
1859 took a number four, failing by almost any measure station.
1860 That DTV transition solution was a 15 watt transmitter, 15
1861 watt. With a local businessman, we entered into a JSA. That
1862 station is now competitive for number two, and won the
1863 national Edward R. Murrow Award for best local newscast last-

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1864 -

1865 Ms. {DeGette.} Thank you.

1866 Ms. {Burdick.} --year.

1867 Ms. {DeGette.} Mr. Wood, how would you respond to this,
1868 so we can get your opinion on the record as well?

1869 Mr. {Wood.} Well, more than one witness has used the
1870 word fiction, and I think there have been a lot of stories
1871 told in both directions. I think the problem we have had
1872 until now is that JSAs are just one tactic that broadcasters
1873 use to coordinate. And, as Chairman Walden said, when it is
1874 inappropriately done, when it actually harms competition, and
1875 that is both in terms of retransmission, and also in terms of
1876 the newscasts that we see, and other diversity of viewpoints,
1877 and competing viewpoints, that we need, that is when we are
1878 concerned.

1879 When there is a de facto transfer of control, and you
1880 actually have one station airing the same news on two, or
1881 three, or four channels in a market, we have documented
1882 several examples of that, and we think the Federal
1883 Communications Commission needs to look into that practice to
1884 see when there is actually a transfer of control happening,

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1885 and shared news, rather than just shared advertising.

1886 Ms. {DeGette.} Thank you very much. Mr. Chairman, I
1887 have this letter from the Association of Black Journalists.

1888 It is dated March 10--

1889 Ms. {Burdick.} Could I correct myself? You are right,
1890 I am wrong.

1891 Ms. {DeGette.} Okay.

1892 Ms. {Burdick.} It was the--

1893 Ms. {DeGette.} Thank you.

1894 Ms. {Burdick.} --Black Owned Broadcasters--

1895 Ms. {DeGette.} Okay.

1896 Ms. {Burdick.} --Association.

1897 Ms. {DeGette.} I would like unanimous consent to put
1898 the March 10 letter into the record to--

1899 Mr. {Walden.} Without objection.

1900 Ms. {DeGette.} --clear up any confusion. Thank you
1901 very much.

1902 [The information follows:]

1903 ***** COMMITTEE INSERT *****

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|

1904 Mr. {Walden.} Gentlelady's time has expired. We will
1905 now go to the gentleman from Missouri, I believe is next, Mr.
1906 Long, for 5 minutes.

1907 Mr. {Long.} Thank you, Mr. Chairman. Thank you all for
1908 being here today, and for your testimony. Ms. Burdick, you
1909 discussed earlier today the competition in the local markets
1910 for advertising. You had a chart you put up on the wall. I
1911 know the Department of Justice recently put together a paper
1912 for the Federal Communication Commission detailing the
1913 leverage that broadcasters have in local markets. And how
1914 does your analysis stack up against what Department of
1915 Justice recently found in their findings?

1916 Ms. {Burdick.} Yeah. And thank you for the question,
1917 Congressman Long. I think there are three key points in that
1918 DOJ filing. First of all, large sections of it were lifted
1919 from 1997, dealing with the radio JSAs. They were out of
1920 date, and they were inaccurate. Number two, it never
1921 mentioned cable in the document at all, as if cable did not
1922 compete with local broadcasting for advertising. And I think
1923 this committee's own data suggests that one cable system in a

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1924 market is the equivalent to about a number two or a number
1925 three television station. It didn't even mention the word
1926 cable, much less Internet, or any of the new advertising
1927 sources.

1928 And probably most disingenuous, as far as I am
1929 concerned, is in its footnote the DOJ noted that it itself
1930 had reviewed several complaints of alleged anti-competitive
1931 activity, and found that not to be the case, and encouraged a
1932 case by case review. But then, in its conclusion, basically
1933 came up with a bright line, ban all JSAs. I thought it was
1934 sloppy, I thought it was disingenuous, and I don't think it
1935 should be relied on as a document of fact.

1936 Mr. {Long.} Okay. Thank you. Also for your, Ms.
1937 Burdick, in the draft STELA bill, it contained a provision
1938 eliminating the sweeps rule. And can you explain to me
1939 exactly how that rule works, and what the potential impact on
1940 smaller stations and smaller markets would be?

1941 Ms. {Burdick.} Well, I think you have rightly hit on a
1942 point that most people have not recognized, and that is the
1943 impact on smaller markets. Many of our members of NAB don't
1944 like it. We have said we could support, and could live with,

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1945 the compromise in this legislation. But the distinction is
1946 that larger markets, usually markets 60 and above, are always
1947 in sweeps. They are metered markets. Diary markets, 60 and
1948 below, are rated four times a year, and basically their
1949 advertising and their economics are set three times a year.

1950 And this was enacted because of documented mischief from
1951 the cable side in history, where they were pre-emptively
1952 taking broadcasters off the air during sweeps, so their rates
1953 and their advertising economics would be negatively impacted.
1954 But we have said we can live with it, and we would support
1955 that change in the bill. But there is a distinction of local
1956 markets, and I appreciate you raising it, small markets.

1957 Mr. {Long.} Okay. Thank you. And I have got to say,
1958 earlier, when Mr. Zinn was making reference to Mr. Powell
1959 next to him, and said, this guy, and then Mr. Powell reached
1960 over and picked up his cup, I thought we were going to have a
1961 Jerry Springer moment for a minute. But thankfully he was
1962 just going for a drink of water. I yield back, Mr. Chairman.

1963 Mr. {Walden.} Gentleman yields back the balance of his
1964 time. We turn to the gentleman from Iowa, Mr. Braley.

1965 Mr. {Braley.} Thank you, Mr. Chairman. I hope we don't

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1966 have a Jerry Springer moment here. I don't think that the
1967 committee could handle that.

1968 Ms. Burdick, I once tried a case in the Quentin Burdick
1969 Courthouse in Fargo, North Dakota. Are you at all related to
1970 Senator Burdick?

1971 Ms. {Burdick.} You know, I asked my husband that.

1972 Mr. {Braley.} Yeah.

1973 Ms. {Burdick.} As far as I know, although that family
1974 is from that North Dakota-South Dakota border, we don't think
1975 so.

1976 Mr. {Braley.} Well, it is a lovely courthouse. If you
1977 ever get to--

1978 Ms. {Burdick.} Yes.

1979 Mr. {Braley.} --Fargo--

1980 Ms. {Burdick.} And there is a Burdick Highway.

1981 Mr. {Braley.} It is. I am glad that the committee is
1982 moving forward on a reauthorization of STELA, and I want to
1983 be open to all the stakeholders who have an interest in this
1984 reauthorization, and so I have a very simple question for
1985 each one of you. I know it has been a long hearing, but I
1986 want to ask each of you, if there was one thing you could

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1987 change about the discussion draft to improve it, what would
1988 it be? And I will start with you, Mr. Wood, and we will just
1989 work our way down the table.

1990 Mr. {Wood.} I would simply remove Section 4 and give
1991 the FCC the power to look into these agreements so that they
1992 can make the data driven rules that we all know they need to
1993 have in this day and age.

1994 Mr. {Braley.} Thank you. Mr. Zinn?

1995 Mr. {Zinn.} I would eliminate the 629 amendment. If
1996 you step back, this is STELA legislation designed to provide
1997 distant signals to 1.5 million unserved satellite customers,
1998 but it has been hijacked to disenfranchise a million people
1999 who are using retail devices. And this committee is not one
2000 to pick winners and losers, and, you know, I would take that
2001 out.

2002 Mr. {Braley.} Mr. Powell?

2003 Mr. {Powell.} I think we would just continue to work
2004 with the committee to make sure that the JSA provisions are
2005 sufficiently tight, that they don't undermine the ability for
2006 the commission to look at this issue in the narrow area of
2007 retransmission consent.

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2008 Mr. {Braley.} Thank you. Ms. Burdick?

2009 Ms. {Burdick.} Yeah, thank you for the question. My
2010 change would be, if there are going to be requirements that
2011 govern how one side of the table, broadcasters, can negotiate
2012 retransmission consent, that similar agreements on the MVPD
2013 side also be looked at.

2014 Mr. {Braley.} Okay. Thank you. Mr. Palkovic?

2015 Mr. {Palkovic.} Yeah, we are very happy with the way
2016 the bill is drafted today. If we were going to change
2017 anything, we probably want to be a little bit stronger on the
2018 blackout issue, so there is no way that people can black out
2019 channels.

2020 Mr. {Braley.} Well, I appreciate all of your succinct
2021 answers, and I will treat you with a similar courtesy, and
2022 yield back the balance of my time. Thank you.

2023 Mr. {Walden.} Thank the gentleman for yielding back. I
2024 am going to yield, before I go to Mrs. Ellmers, to the
2025 ranking Democrat here.

2026 Ms. {Eshoo.} Thank you. Mr. Chairman, I just want to
2027 ask for a unanimous consent request to place in the record
2028 the Pew Research Center's Project for Excellence in

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2029 Journalism, which demonstrates the amount of healthy revenues
2030 that are reported relative to local broadcast TV advertising
2031 revenue and its growth. Thank you.

2032 [The information follows:]

2033 ***** COMMITTEE INSERT *****

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|

2034 Mr. {Walden.} Thank the gentlelady. And before I yield
2035 to Mrs. Ellmers, I am just curious if, Ms. Burdick and Mr.
2036 Powell, on this issue of the sweeps, and the market size, we
2037 are not trying to do violence to somebody. Is that an issue,
2038 Mr. Powell, that you think there is common ground, maybe,
2039 between these that are metered and those that are di-read?

2040 Mr. {Powell.} I think--

2041 Mr. {Walden.} Or is that something--

2042 Mr. {Powell.} --we fully support the provision as it is
2043 currently drafted.

2044 Mr. {Walden.} Currently drafted, okay. We will go now
2045 to Mrs. Ellmers for 5 minutes.

2046 Mrs. {Ellmers.} Thank you, Mr. Chairman, and thank you
2047 to our panel for being here today on this very important
2048 issue, as we take the steps forward to deal with STELA. I do
2049 have some questions for Mr. Palkovic that are a little more
2050 specific to North Carolina, my region of the country, and
2051 having to do with Inspiration Network, one of the independent
2052 networks.

2053 It has come to my attention, Mr. Palkovic, that there

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2054 have been some negotiations, and that DirectTV is no longer
2055 carrying Inspiration TV. And I am coming at this approach
2056 not only as a member of this committee, a member of Congress,
2057 but also as a mom, and, actually, one of your customers. I
2058 am concerned about this, because there seems to be a little
2059 bit of unfair dealing with how we deal with the independent
2060 networks.

2061 And I just was wondering if you could discuss that with
2062 me, and then if you would be so kind as to commit to work
2063 with my office, this committee, and others within the
2064 independent networks as well.

2065 Mr. {Palkovic.} Sure. We are always happy to work with
2066 people on these kind of issues. We have, as you can imagine,
2067 a lot of programming agreements. And some of the agreements,
2068 you know, we are paying for content, some of the agreement
2069 the content providers pay us to be carried. And--

2070 Mrs. {Ellmers.} Um-hum.

2071 Mr. {Palkovic.} --as you can probably appreciate, we
2072 don't disclose individual terms and conditions.

2073 Mrs. {Ellmers.} Sure.

2074 Mr. {Palkovic.} We are not allowed to, contractually.

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2075 In this particular case, we had a relationship with the
2076 Inspiration Network they did not want to continue along the--

2077 Mrs. {Ellmers.} Um-hum.

2078 Mr. {Palkovic.} --same lines, or even similar lines, as
2079 their previous agreement, so they chose to take their channel
2080 down.

2081 Mrs. {Ellmers.} Um-hum.

2082 Mr. {Palkovic.} Sometimes we are forced to take a
2083 channel down. We don't like to do it. It is not in any way,
2084 shape, or form what we strive for. In this case, it happened
2085 to be their decision.

2086 Mrs. {Ellmers.} Um-hum. And that is--

2087 Mr. {Palkovic.} Our door is always open for them if
2088 they want to come back.

2089 Mrs. {Ellmers.} And that is my understanding as well,
2090 and our purpose is not to interfere with negotiations. This,
2091 for me, again, is an issue of fairness, you know, one that I
2092 believe is very important in dealing with these types of
2093 issues, especially with the appearance that it takes. You
2094 know, being that this particular network deals with family,
2095 wholesome, faith-based programming, I see them as possibly

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2096 being discriminated against.

2097 And it is my understanding, and there again you don't
2098 have to go into details, but that, actually, they were paying
2099 a significant amount of money to be carried by DirecTV, that
2100 cost was going to have to go up. And then, within the
2101 negotiations they said, look, we simply can't afford that,
2102 and, by the way, we know that you actually carry other
2103 networks for free, and, you know, can't we negotiate that
2104 kind of a deal? And, as you can imagine, the appearance is
2105 that they are being dealt with unfairly.

2106 Mr. {Palkovic.} Well, I can assure you, our track
2107 record as a company is just the opposite of that. We do deal
2108 with people fairly. And I won't get into the details--

2109 Mrs. {Ellmers.} Um-hum.

2110 Mr. {Palkovic.} --of that particular relationship, but
2111 obviously we had a deal with them on acceptable terms.

2112 Mrs. {Ellmers.} Um-hum.

2113 Mr. {Palkovic.} And, as I said, there was discussions
2114 about continuing under similar conditions, different than
2115 what you characterized, through what you have been told, and
2116 they chose not to.

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2117 Mrs. {Ellmers.} Um-hum.

2118 Mr. {Palkovic.} So if, for some reason, they want to
2119 continue discussions, again--

2120 Mrs. {Ellmers.} Um-hum.

2121 Mr. {Palkovic.} --we talk to everybody. And, you know
2122 your comment on programming that is targeted at, you know,
2123 the family program, we are a huge proponent of family
2124 programming. We have a lot of examples of that on our
2125 platform. Just so I can get it on the record, we are a big
2126 proponent of--

2127 Mrs. {Ellmers.} Um-hum.

2128 Mr. {Palkovic.} --family programming at DirecTV.

2129 Mrs. {Ellmers.} Well, thank you. And will you commit
2130 to me today that we can work together on this, and then bring
2131 others together so that we can solve this problem?

2132 Mr. {Palkovic.} Sure.

2133 Ms. {Eshoo.} Would the gentleman--

2134 Mrs. {Ellmers.} Thank you so much.

2135 Ms. {Eshoo.} --gentlewoman yield just for--

2136 Mrs. {Ellmers.} Sure.

2137 Ms. {Eshoo.} --5 seconds?

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2138 Mrs. {Ellmers.} I have 37 seconds.

2139 Ms. {Eshoo.} Yeah. I just want to say that I would be
2140 happy to work with you on this, and--

2141 Mrs. {Ellmers.} Wonderful.

2142 Ms. {Eshoo.} --it is not negotiations, it is
2143 suggestions, and we are happy that you are open to what the
2144 gentlewoman spoke to. So I would be happy to--

2145 Mrs. {Ellmers.} Thank you.

2146 Ms. {Eshoo.} --work with you.

2147 Mrs. {Ellmers.} Thank you to the ranking member, and I
2148 am looking forward to being able to work together on this.
2149 Thank you very much, and I yield back the remainder of my
2150 time.

2151 Mr. {Walden.} Gentlelady yields back. And that is
2152 obviously an issue a number of us have heard about, so
2153 appreciate you raising that. Turn now to the gentleman from
2154 Nebraska, Mr. Terry.

2155 Mr. {Terry.} Appreciate you calling to say you wanted
2156 me to come back to extend this hearing by another 5 minutes.
2157 Actually, I had a quick meeting I had to take, so I am glad
2158 it was still going on when I got back.

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2159 Mr. Powell, I am interested in learning a little bit
2160 more about the interconnects that Ms. Burdick referred to in
2161 her testimony, and how that works, but do you have any
2162 additional information on joint sales of local advertising
2163 between cable, satellite, and telcos? What is your view
2164 and--

2165 Mr. {Powell.} You know, I think--

2166 Mr. {Terry.} --perception?

2167 Mr. {Powell.} --I would say, for purposes of this bill,
2168 the joint use of agreements for advertising has absolutely
2169 nothing to do with what we are here making support for. We
2170 are having a concern with the use of joint agreements as a
2171 basis for validating collective negotiation of retransmission
2172 consent, not advertising. I don't have an opinion on whether
2173 their advertising models are efficient or not efficient in
2174 the sales of local advertising.

2175 What I do think is, beyond efficiency, and treads into
2176 the territory of anti-competitive conduct, is collusively
2177 negotiating prices for re-trans consent. And I don't think
2178 that bears on at all whatever the virtues, or lack of them,
2179 on local advertising markets are.

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2180 Mr. {Terry.} Ms. Burdick?

2181 Ms. {Burdick.} Thank you. The fact of the matter is
2182 that the cable industry itself, in an ex parte filed by
2183 NexStar in the last couple of days, they cite some specific
2184 examples where non-co-owned cable companies have linked
2185 together their negotiations with the same consultants. And I
2186 am not here to speak badly of cable. We own cable companies
2187 as well. But we have personal experience with ACA members in
2188 which they will tell us in a negotiation that they will have
2189 to run this by ACA, or the ACA attorneys, before they can get
2190 back to us on the acceptance of a deal.

2191 So my only point was, if you are going to look at how
2192 those negotiations happen, look at it not just on the
2193 broadcast side, but on the other side as well. And, you
2194 know, I may be the only one in the room who finds it a little
2195 ironic that Comcast and Time-Warner can merge, but two little
2196 stations in August, Georgia can't talk to them about their
2197 retransmission agreements, but--

2198 Mr. {Terry.} Fair point.

2199 Ms. {Burdick.} --I would encourage you to look at both
2200 sides.

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2201 Mr. {Terry.} So in regard to JSAs, in calculating
2202 ownership, which I think is a creative thing, do you think
2203 that many broadcasters would have to unwind JSAs in order to
2204 remain compliant with local ownership caps?

2205 Ms. {Burdick.} The proposal that has come out from the
2206 FCC suggests that there would have to be a hard unwind.
2207 There are rules yet to be written. In our particular case,
2208 our agreement was reviewed and approved by the FCC in 2008, I
2209 think it was. So if now, a few years later, after investing
2210 \$11 million in equipment, and expanding news and public
2211 service, I have to unwind, I would suggest that is a harmful
2212 thing. So the rules have yet to come out, but the suggestion
2213 is yes, there would have to be an unwind that would lead to
2214 less news, less local news, and less public service.

2215 Mr. {Terry.} Okay. Mr. Wood, is there any scenario for
2216 JSAs to be not anti-competitive? If you can use two
2217 negatives.

2218 Mr. {Wood.} You can. I don't know if I can. As we
2219 have said, JSAs are really just the tip of the iceberg here.
2220 The FCC has a long record on them, and has been studying them
2221 for a while. They have applied this rule in the radio

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2222 context for several years.

2223 I want to be clear again that when we talk about
2224 synergies, and eliminating back office expenses, that is jobs
2225 too. The same NexStar letter that was referred to by Ms.
2226 Burdick said that some of our figures were wrong. And they
2227 said of our 30 layoffs, only three of those were on-air
2228 personalities. So the other 27 people still lost jobs as
2229 well. I would say that perhaps there is some efficiency to
2230 be gained from combining back office operations.

2231 However, we are talking more about total management and
2232 control of one station by another, especially when the
2233 sidecar companies, or shell companies, are doing nothing but
2234 holding the license for the purpose of evading FCC rules, and
2235 not necessarily situations where you do actually have
2236 separate news teams, and separate broadcasters, but where the
2237 owner, for FCC purposes of the license, is doing nothing but
2238 that. Has no office, no personnel, no control over
2239 programming, no control over leasing, or any right to sell
2240 the station to anyone but the operating broadcaster.

2241 Mr. {Terry.} Let me ask you about this scenario, then.
2242 What about JSAs just for, as Mr. Powell was discussing,

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2243 negotiations for retransmission on either side, the cable
2244 side or the network sides?

2245 Mr. {Powell.} Yeah. We--

2246 Mr. {Terry.} Or the station owner sides?

2247 Mr. {Powell.} Yes. I am sorry. We have said in our
2248 filings that we want the FCC to take a look at the totality
2249 of the circumstances here. JSAs are one indicator of common
2250 control. I wouldn't say that they necessarily transferred
2251 control all by themselves. And so there could be a role for
2252 some negotiations, and some sharing of resources.

2253 Another example that is commonly cited is the same two
2254 stations using a radar system, or sharing the same news
2255 helicopter, or something like that, that is a physical asset.
2256 Our hackles are raised when they are sharing people, and
2257 sharing news, and sharing the same stories on two supposedly
2258 competing stations.

2259 Ms. {Burdick.} May I answer that one quickly?

2260 Mr. {Terry.} Certainly. Go ahead.

2261 Ms. {Burdick.} Mr. Chairman, Free Press starts with a
2262 false assumption, that if there wasn't this sharing, that
2263 there would be a robust separate--

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2264 Mr. {Terry.} Right.

2265 Ms. {Burdick.} --newsroom, and that is simply not true.

2266 Mr. {Walden.} Thank the gentlelady. Mr. Latta, I

2267 believe you have something for the record?

2268 Mr. {Latta.} Thank you very much, Mr. Chairman. I

2269 would like to enter a letter of support from my language

2270 regarding an integration ban from the League of Rural Voters.

2271 Mr. {Walden.} Without objection, so ordered.

2272 [The information follows:]

2273 ***** COMMITTEE INSERT *****

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|

2274 Mr. {Walden.} And I have an item from the ``Wall Street
2275 Journal'' from Juan Williams I referenced in my testimony I
2276 would like to put in the record. Without objection, so
2277 ordered.

2278 [The information follows:]

2279 ***** COMMITTEE INSERT *****

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2280 Mr. {Walden.} And I want to thank the witnesses, and
2281 all of the participants in this hearing, our members. This
2282 is obviously an important subject, a complicated one, and we
2283 are going to continue to move forward. We thank you. We
2284 will probably have some questions for the record to clarify
2285 some issues going forward, but thanks for your participation.
2286 And with that, we stand adjourned.
2287 [Whereupon, at 12:34 p.m., the Subcommittee was
2288 adjourned.]